

to him if he were off the program. In fact he tried to buy Cadets, maybe 3 years ago, and United States Rubber Company would not sell him, due to other commitments they had in his town. This was in connection with both stores.

Brown Shoe Company has never told the witness that he could not carry an outside or conflicting line of shoes. He has never been asked to stop carrying an outside or conflicting line of shoe. He has not signed a franchise agreement. Brown has never said he must receive any line or lines of Brown shoes. The witness determines the brands of shoes that he carries. He does this through experience and examination. He looks for quality, style, fit and price. It is quite variable. He does not feel any obligation to Brown as a franchise dealer. His decisions are his own. He doesn't feel that because he is a franchise dealer he must buy any certain brands or quantities. It is the witness' understanding that he can leave the Brown franchise program anytime he wishes.

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[fol. 582] Salesmen from Juvenile Shoe Corporation, who make Clinics and Lazy Bones, have never called on the witness. He has called on them and has been refused. This occurred a year and a half ago. He was interested in their nurse type shoes called Clinics and called on the salesman at the Los Angeles Shoe Show. The man said the shoes would not be available to the witness because they already had an account in Eureka. No one from Juvenile has ever tried to sell him the Lazy Bones line. He would not be interested in buying it. He believes the line that he is already carrying, Buster Brown shoe, is a better line of shoe both from customer acceptance and fit, quality.

He has never carried the line of Deb Shoes. He has been called on by salesmen from Deb, and agreed to buy their shoes. This was in 1954 and 1955, during those two years. The salesman's name was Arthur Seran. The witness said, we detailed the sizes for both stores and he informed us that he had reviewed the situation in our town and decided not to sell us, and sell another competitor, this competitor being Gregori Shoes. Gregori's is a family shoe store across the street from the witness, about two doors. The

Deb salesman offered to give the witness the Demoset brand on the same shoe. He refused the Demoset brand because, first, the Deb brand was much more important as far as customer acceptance, and secondly, it was rather insulting to be refused after he had agreed to buy the shoes. These Demoset shoes are the same shoes as the Deb shoes, but with a different label.

The witness has never been called on by a salesman from the Freeman Shoe Company. He has had occasion to have coffee with the gentleman and talk to the gentleman several times. The gentleman has never attempted to sell him shoes. He had a satisfactory account in Eureka. The witness has never had a salesman from the Weyenberg Shoe Company. He knows they have an account in Eureka. He [fol. 583] is almost positive that they have an account in Gregori's Shoe Store. He has been contacted by someone from Huth-James. He did not buy their shoes, because he wasn't interested in the shoes of that quality. He was very satisfied with what he was carrying with other companies. He has never been called on by a representative of the Leverenz Shoe Company, who make Calumet.

In connection with the foregoing six manufacturers, no one from Brown Shoe Company ever tried to prevent the witness or counsel him against buying shoes from these companies. He said, in fact, I believe that at the time we bought Deb shoes, that the fieldman had recommended we purchase those shoes as they would be a good addition to our shoe store in Eureka and in Arcata. I believe Mr. Robbe and I discussed this and he advised me to buy the shoes.

Cross-examination.

As to the window trim service provided through the Brown franchise program which the witness uses, he has not had the occasions to check another source for a similar service. He doesn't know of anything available that would be similar. He is satisfied with the services that they provide through the window trim service. He thinks he is getting a good bargain on it. If he did it himself, it would very likely cost him a good deal more than that. There is a certain amount of artistic skill.

The witness has made a loan from Brown Shoe Company. In 1951 he borrowed \$10,000.00. He has repaid it. The witness doesn't feel any obligation towards Brown for the benefits and services he has received through Brown franchise programs. When he gives credit to one of his customers, he doesn't expect him to come back and buy shoes from him. That customer is not obligated to the witness. The witness is obligated to him. He is glad to be deserving of his business. The reason he gives this customer credit is not in the hope he will come back again. This is the way of doing business and it is part of the witness' business.

[fol. 584] He uses a Brown line as his principal line in each of his three categories. Approximately 75 to 80 percent of his inventory is represented in Brown lines. As to whether the other brands that he carries conflict with Brown lines, he doesn't think he can fairly answer that question. Individual shoes will conflict with Brown's lines, the way he carries them. When he can find a better shoe, a better accepted shoe at a better price from another company, he will buy that shoe and not buy the similar style from the Brown Shoe Company lines.

As to the other shoes in his store, the witness carries the full line of Red Ball Jets, Weatherproofs, Cadets, Sun Steps. The manufacturer is Mishawaka Rubber Company, part of the U. S. Rubber Company lines. He carries a complete line or representative—he carries shoes from Edith Henry Company that represents this line, Santa Rosa Work shoes, he carries a complete picture there. Wolverine Shoe Company. He represents the full line of Edith Henry. Quite a few of those shoes conflict with the Brown line.

The witness does not know the theory of line concentration. As to whether he believes that he should have two lines of men's shoes which have the same style and are in the same price range, he said, not a complete picture, no. You might have one as a complete picture and others as a supplement that the first line doesn't have.

The witness was asked whether he supplemented his principal line in each of the men's, women's and children's categories which was, according to his testimony, a Brown line, with these other manufacturers' lines that he testified about. He answered, not the way you have asked the ques-

tion, no. We don't supplement children's shoes. We supplement in men's and women's but not in women's heels. By that I mean women's flats but not women's heels.

Some of the lines he carries other than Brown do supplement his Brown lines, but others are a complete line. In other words, he doesn't want to give the idea that every line he carries out of Brown supplements Brown. Some do and some are complete lines. In the case of Edith [fol. 585] Henry, Brown Shoe Company carries a comparative shoe. He happens to like the quality, the fit, the customer acceptance of Edith Henry line. As to whether he get the same shoes from Brown that would be the same as the Edith Henry Shoes, he said, some of them we do, some we don't. That is a broad picture. You can't answer a lot of your questions definitely. Yet witness would say he was concentrating on Brown lines if he has approximately 75 or 80 percent of his inventory in Brown lines.

The Brown fieldman recommended that he buy Deb shoes. The fieldman recommended that he buy a group of styles from Deb, not the complete line. The reason was to enhance the witness' business and be profitable to him, but to buy a complete line, you can't do that because they have probably 200, 300 styles. He doesn't remember exactly how many he did buy, but he would imagine he bought 5 patterns, maybe, in 12 colors. He would represent the line. He can't remember what the styles were. There have been a lot of styles since then. It is quite confusing to remember. The fieldman didn't recommend the particular styles. He recommended the witness buy a group from them. He did not say which group. In a business of this type, a man is his own buyer. A fieldman isn't his buyer. The buyer selects the styles.

As to whether the fieldman does encourage the witness to buy certain lines, he said, yes, if he thinks it would be profitable to us. The fieldman has been very helpful to us. Our welfare has been his interest. He has been fortunate to have such a fine shoe company behind him, excellent shoes. The Deb styles that the fieldman suggested or that the witness bought were styles that Brown didn't have. The Deb shoe at that time was styled by the buyer. The witness would style each shoe and designate leathers and colors and trim, finish on the shoes, so it is hard to say

that they were the same styles as Brown. They were similarly priced and of a similar quality.

Redirect examination.

As to whether the witness can recall if Brown had any shoes comparable to the Deb shoes that were as popular at [fol. 586] the time he bought the Deb shoes, he said, yes, I can recall only one, and there must have been others that went along with it.

In connection with the loan that he received from Brown, there was no tie-in with the purchase of Brown shoes or the non-purchase of outside lines. Such a thing was never discussed with the Brown people. He does not feel any hesitancy whatsoever in buying a non-Brown line of shoe, or line of shoes other than the Brown brand, as a member of the franchise program.

CHESTER CASHION, called as a witness for the Respondent, testified as follows:

Direct examination.

His store is located in Fresno, California. It is in the Fig Garden area, and the name of the shopping area is Fig Garden Village. The population of Fresno itself is around 90,000. His store in the Fig Garden Village area is not in the city limits of Fresno. He guesses it would be in the Pillar District, a suburb of Fresno. His store in the Fig Garden Village is on the franchise program. The witness went on the program about 5 years ago. That was not coincident with the opening of the store. His first location was not under the Brown franchise. The witness franchised when he moved to that area about 5 years ago.

The name of the store is Cashion's. That is the only sign on the outside. The Brown lines of shoes carried in the store are, in the men's line, Roblee and Pedwin, children's line is Buster Brown, women's is Life Stride and Glamour Deb, a division of Buster Brown. The witness carries other lines of shoes also. In the women's line, he carries Caprini, Vocelli, Capezio, and Hollywood Scooter, Capezio,

Amano, Italian Footwear. He does not carry Naturalizer. In the children's he carries Pied Pipers and Young Capezios. The Pied Pipers are in a higher price range than Buster Brown.

[fol. 587] The witness would describe his shoe store as a family shoe store, but it is fashion wear mostly. That includes fads and high style merchandise. The shoes that he mentioned, Caprini, Vocelli, Capezio, would be classified as strictly high fashion.

The witness has carried Hush Puppies; he does not carry them now, because they don't move. That is a factor in determining what lines are carried in his store. The witness determines what lines he carries. Being on the Brown franchise program, no one from Brown has told him to carry certain lines of shoes. The fieldman calls on the witness. He usually completes the witness' monthly report, and helps the witness with his bookkeeping. The witness uses the Brown franchise record system. The fieldman does not ever make any suggestions to the witness about carrying any particular line of shoes. In other words, the line of shoes he carries is his own decision.

Mr. Cashion does not use the group life insurance under the Brown franchise program. He carries business or casualty insurance on his store operation, but not through the Brown franchise program. He carries it locally. He has used the architectural service under the Brown franchise program. The occasion was when he opened the Fig Garden store. He has never made an investigation as to what might be the comparative costs if said service were secured outside the franchise program.

As to whether he uses the window trim service under the franchise program, he said, just what they send me through the program, yes. That is not material that he pays for. It is just seasonal posters and display cards. He gets a similar type of material from some of his other sources of shoes. That would be mostly posters, sometimes seasonal colorful display material. He does not pay for that from the other sources. They send that to the witness in connection with the shoes that he carries of their line.

His store carries rubber and canvas footwear. The name of the company is U. S. Rubber Company. He buys directly [fol. 588] from U. S. Rubber salesmen. It is billed through

Brown. He does not have any reason to believe that by buying it that way, he gets any more favorable prices than he could otherwise. He has made a check as to what the price would be otherwise. The witness said he can get the same discount by buying it without going through Brown. He doesn't know whether he can buy in smaller quantities by having it billed through Brown than he otherwise could. If you buy the same quantity from U. S. Rubber, you get the same discount. He thinks there is a limit there on the quantity that you would get an extra discount on. He has no idea what that quantity would be.

Q. When you became a Brown franchise store, did you ever sign a written agreement?

A. If I did, I don't know where it is.

Q. Did you ever have any occasion to refer to it, if you did sign such an agreement?

A. No.

Q. Did anybody from Brown Shoe Company, do you recall, since you went on the program, ever bring any provision in that agreement to your attention?

A. No.

Q. What is your understanding as to when you can leave the Brown franchise program?

A. Any time I get ready.

Hearing Examiner Creel: What do you understand your obligation to Brown to be as a franchise store owner?

The Witness: As far as I am concerned, I have no obligation to them whatsoever. It is just a help to me.

The witness went on the program mainly because of the bookkeeping process. He had never done any bookkeeping himself. In operating this store, it was his first experience in that line.

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[fol. 589] The type of community in which the witness is located has a bearing on the type of shoes he carries. [fol. 590] They are in a particular area where most of the high school kids out there are strictly high fashion conscious, and he has to go along with what they desire, and they change their desires quite often. He conforms the

type of shoes he carries to meet that type of customer demand.

He has never carried any of the shoes manufactured by Juvenile Shoe Company. No salesman has ever called on him or tried to sell him Clinics or Lazybones. His type of store would not be the type that would stock the Clinic shoe. He would never have any call for that type of footwear. The women in the area are not nurses. They would have no use for that type. This is the type of situation that the witness just referred to as sort of a customer demand, that determines the type of shoe he carries in his store.

His store has carried shoes manufactured by the Deb Shoe Corporation. Approximately 3 years ago was the last time he used any of their shoes. He dropped them because he was able to get a Capezio line, there was a conflicting style in those two lines. Being on the Brown franchise program had nothing to do with his dropping the Deb Shoe. He made the determination to drop Deb in his store, for the reason just stated. It had nothing to do with the Brown franchise program.

He has never carried Freeman shoes. A salesman from Freeman has never called. He has never carried shoes manufactured by the Weyenberg Shoe Company. Salesmen have never called. In a store like his, Freeman's or Weyenberg's would not be the types he would request to meet customer demand. He has never carried any shoes of the Huth-James Company. Salesmen of that company have never called on him. He has never carried any Leverenz Shoes. Salesmen from that company have never called on him.

Cross-examination.

Five years ago the witness moved to his present location and went on the Brown franchise program. Before that he was located approximately five miles from where he is at this time. He owned that store. He opened that store [fol. 591] 8 years ago, just carrying ladies' apparel, and later added shoes to it, about a year before he went out to the Village. At this time shoes were about 50 per cent of his inventory. He was carrying just juvenile shoes, mostly Buster Brown. He had a few Debs at the time, Debs and

Buster Browns and U. S. Rubber. He dropped Debs after the first year he was with them and then rebought the line again a couple of years later for just one season. He dropped them when he moved to his present location.

The witness is a high style dealer. He buys high style women's shoes for young ladies from several different manufacturers. He buys patterns. This is what is known as "hotshotting".

The witness thinks he is fairly successful in his business. In the area that he is in, he thinks that that is the best way to buy or the best way to do business, if you're going to sell fashion shoes.

He has never received a loan from Brown Shoe Company. His credit arrangement with them is a normal cash discount. He does not get additional credit from them. He was carrying the U. S. Rubber canvas wear in the store he had prior to the one he has now. The main purpose for going on the Brown franchise program was to obtain bookkeeping services that they give through this program. He finds that very beneficial. He is not a bookkeeper. Without the bookkeeping services given through that program, he would have a difficult time keeping the shoe business. He has a bookkeeper now, but did not have one at the time he went on the program. His bookkeeper keeps the Brown records and then he has an accountant to take care of the rest of the work. The bookkeeper does double duty. She cashiers and bookkeeps and sells hosiery, too. About a third of her time is on the bookkeeping system. He pays \$50.00 dollars a week. He has an accountant, too. He thinks the charge for his service runs about \$30.00 a month. The bookkeeper fills out the monthly report to Brown. The fieldman has been helping the witness because this is the first bookkeeper that he has had, that has been able to do it herself. When the fieldman used to fill out his [fol. 592] monthly report, he did not encourage the witness to carry certain lines.

As to whether the fieldman ever mentioned that the witness should drop or carry a certain line, the witness said the only time was when he first went on the program. He went into a stable type of footwear which he carries—Air Steps and basic shoes. Going into this new area, he

found it was entirely wrong, so the fieldman told him to drop it and go wild and buy high style merchandise, because that was what they would want. His sales of Air Steps prior to dropping it as a line were practically nil.

At this time the witness was shown Commission's Exhibit 25-A through C, the Brown Franchise Agreement, and asked if he had ever seen this instrument before. He might have, but he looked for it before he came up here, and he can't remember having it, and he couldn't find it in his files. The witness was asked to read Paragraph 10 of Commission's Exhibit 25-C. He was not familiar with that language.

Redirect examination.

The dropping of Debs was not coincident with the witness' move to his present location in Fig Garden Village. He had a disagreement with the salesman, that was the reason he dropped Debs. It did not have anything to do with going on or being on the Brown franchise program. He made the decision to drop it, then at a subsequent time, he resumed some purchases of Debs.

The witness did not replace the Air Step line with another one after he dropped it, at that particular time. He just had to play certain lines to see what the demand was going to be, and as far as replacing it with something else, there was never any definite line he replaced it with. Actually, there has never been any line in the store comparable to the Air Step line since then.

He does not consider his store in the Fig Garden Village a typical family shoe store. This is because of the high fashion merchandise that he sells.

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[fol. 593] Recross-examination.

As to the disagreement with the Deb salesman, the witness said, I don't like his tactics. We had quite an argument over my decision of what I wanted out of his lines. That was just before coming to the present location.

STANLEY A. TANNER, called as a witness for the respondent, testified as follows:

Direct examination.

The witness resides in Santa Rosa, California. He is in the shoe retail business there. One of his stores is located at 527 Fourth Street. The name of the store is Smith's Shoe Store. He has another shoe store in Santa Rosa at 528 Farmers Lane Shopping Center, a suburb of Santa Rosa. He has another store in Ukiah, about 60 miles north of Santa Rosa. These 3 stores are on the Brown franchise program. The approximate population of Santa Rosa is 30,000. There is a larger area for trade purposes. The population of such an area is estimated at about 125,000. There are other shoe outlets in Santa Rosa. Approximately 10 shoe stores, that are exclusive shoe stores, and probably another 10 shoe stocks in department stores, and men's and women's apparel shops.

The witness carries practically the same brands of shoes in all three stores. It would be easier for him to indicate what he carries at the 527 Fourth Street Store, that being the larger store. In the Brown lines he carries Roblee, Pedwin, Air Step, Life Stride, Buster Brown and Robin Hood. In other brands, he carries men's and women's Florsheim shoes, Clinic, a few Lazy Bones, golf shoes, Penaljo, California Cobblers, Spaulding, Wright Arch Preservers, L. B. Evans, G. H. Bass, Johanson, Mr. Gus, made by the Wilbur Shoe Manufacturing Company, Edith Henry, a shoe or two from Deb Shoe Company, Hush Puppies, and the Santa Rosa brand of boots or work shoes. It is a local manufacturer.

[fol. 594] No one from Brown Shoe Company has ever told him that he could not carry an outside or conflicting line of shoes. As to whether anyone from Brown ever asked him to stop carrying an outside line of shoe, he said they tried to sell us the shoes in that category but they never asked us to discontinue any. He is referring to the salesmen. No one from Brown Shoe Company ever told him that being a franchise dealer, he must carry a line of Brown shoes.

He carries canvas and rubber footwear in his three stores. He carries U. S. Keds and Ball Band, Mishawaka

Rubber Company. In the purchase of U. S. Rubber, those billings come through the Brown Shoe Company. This does not give him any different terms than he would otherwise get. He buys a comparable type of canvas footwear from Ball Band. The credit terms which he receives from the Ball Band source are identical to discounts that he gets from U. S. Rubber. The purchase terms referring to quantities are similar and the discounts are too. Prices of U. S. Rubber are practically identical to prices of a similar type of product he would purchase from Ball Band.

The other store in Santa Rosa is located in an area known as Montgomery Village, roughly two miles from the center of downtown Santa Rosa. It is a shopping center type of thing. The shoes he carries in that store are substantially the same as in his downtown store, however, that store carries no women's heel shoes, no women's fashion shoes, so there are some lines carried downtown but not in that store. This would include a shoe like Johanson. Air Step and Life Stride shoes are not carried in that store, except he has one or two items in low heel shoes from the Air Step line, and he believes one or two from the Life Stride line. He does not carry Smartaire in those two stores, but does in the Ukiah store. He corrected his testimony to state he has a couple of numbers from Smartaire in his Montgomery Village but not downtown.

The brands carried in his Ukiah store are not as extensive as his Santa Rosa downtown store. He carries [fol. 595] no Spaulding shoes. He has arranged to have Florsheim in August. He carries no Johanson style shoes, no Bass shoes, but does carry a work shoe section which are not in Santa Rosa, namely, Red Wing, Wienbrenner, Acme cowboy boots. That is basically it. What lines he carries in his store is determined primarily by his needs. This store has an opportunity to sell a lot of work shoes and buys several lines of work shoes. If he feels the need of a type of shoe for a price line and feels he can sell it profitably and it is available to him, he buys it.

The witness has a Florsheim sign on the 527 Fourth Street store, on the Montgomery Village store, and one in the making for Ukiah. Those signs are furnished to him. He is not certain that they are his property. He believes

they retain title to the sign. The signs are all outside, and are electrified. The sign at his Santa Rosa store is 3 or 4 by 6 or 7.

The witness in general follows a line concentration policy of merchandising. The term "line concentration" means, so far as his own operation as a shoe merchant is concerned, that in any price line and a type of footwear, he would attempt to concentrate his purchases and promotion on one brand or one line insofar as it is practical. He feels that has helped in the success of his business. It eliminates investment in overlapping sales, types and price lines. It enables him to do a better promotional job by having a broader coverage in that particular line, of concentrating advertising and promotion on it. It helps in the selling at the retail level. There is less confusion developed on the part of the salesman and customer. In other words, brand identification, and it is not confusing the customer with showing her one style in a price, style in one brand, and another style in another brand at that price. You sell around the product, you sell him on the product.

As to whether stocking conflicting lines would increase sales, in his opinion, the witness said, it probably would increase our sales, but in the retail business you would have to evaluate increases in sales with relation to increases in investments and increases in promotional costs, [fol. 596] and trying to determine which is the best net profit way to operate your business.

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[fol. 597] The witness carries Clinics in all 3 stores. No one from Brown has ever attempted to have him discontinue carrying Clinics, or criticized him in regard to carrying them. He said, if they have a product, a product that is competitive, generally speaking, if you say, "Well, I am sorry, we are not interested, we have Clinics", then that generally ends the discussion. As to Lazy Bones shoes, the witness at the present time is carrying in the downtown store their golf shoes, and in the Village store he is carrying a few items in their children's line. He has carried their children's line in the downtown store in a very minor way. He discontinued primarily because they didn't prove

to be profitable, and the reason might have been that this particular establishment has been known as a Buster Brown store where Buster Brown shoes were available through 3 ownerships, way back as far as you can remember. No one from Brown Shoe Company required him to get rid of or discontinue carrying Lazy Bones.

He carries Deb shoes in just one store, the downtown store. He has carried those for a considerable number of years. At one time he used quite a few of their shoes, probably 10 years ago. As a line he carried quite a few styles of Deb shoes then. He discontinued that practice because the shoes weren't consistently satisfactory to him and to his customers, and so the shoes wouldn't be acceptable shoes, and they at that time were one of the few who made better grade flat-heel shoes. Soon thereafter other people came in that field with what he thought was probably a better product, Edith Henry, others. His experience with the shoes other than this one shoe wasn't satisfactory. Being on the Brown Franchise Program did not have anything to do with discontinuing. It was his best decision to do so. They were replaced with other shoes than Brown.

[fol. 598] The witness never carried any Freeman shoes. The salesman from the Freeman Shoe Company never called on him. He thinks Freeman shoes are carried in Santa Rosa, at Healy Shoe Company. That is a family shoe store similar to his. He thinks the White House Department Store carries some. He has never carried any Weyenberg shoes. He doesn't recall whether a salesman has ever called on him to sell that brand of shoes. He doesn't believe so. They have also had a well established account there, the Healy Shoe Company. He has never carried any Huth-James. He doesn't believe a salesman from that company ever called on him. He is reasonably certain they are not sold any place in Santa Rosa. He has never carried any shoes from Leverenz. A salesman has never called on him from that company. He couldn't answer whether they are sold in Santa Rosa.

Mr. Tanner feels no obligation towards Brown by reason of being on the Brown franchise program. He said, our feeling is that we represent certain Brown lines which I named, as we do others, and as representatives of those brand names, we attempt to do a job in merchandising.

I can think of no reason why we would feel we had to carry those.

Q. If a particular Brown line did not sell satisfactorily, would you feel under any obligation to continue that line?

A. No, no. The fact of the matter is, we have had that experience.

Q. What did you do?

A. We carried a line they called Risque shoes, which was a Brown line, and they weren't producing, and we replaced them with Panaljos.

Q. Did anyone from Brown Shoe Company attempt to tell you that you could not do that?

A. The salesman was a little unhappy, but nobody tried to tell us we couldn't do it.

The witness did not sign a franchise agreement when he went on the program. He can leave the Brown franchise program at any time he feels it is in their best interest.

[fol. 599] Cross-examination.

As to the approximate amount of inventory represented by the Brown line, the percentage would probably be 60 per cent of Brown lines and 40 per cent of the other lines, and probably on an evaluation basis, more nearly 50-50. The approximate dollar volume overall for his three stores last year, lumping the three stores together, would be between \$400,000 and \$500,000.

The witness has a Montgomery Village store in Santa Rosa. He has a downtown store at Santa Rosa, and a Ukiah store. He went on the Brown franchise business with the Montgomery Village store when the store was opened, which he believes was in 1953 or 1954. It was opened as a brand new operation. His downtown Santa Rosa store was a going business when he bought it, 1948. It was on the Brown franchise plan when he took it over. The Ukiah store was a Brown franchise store when he bought it.

The witness then thought of two important lines in his downtown operation that he didn't mention. They use Miller shoes made by Miller Shoe Company in Cincinnati, and John A. Frye, Jet Boots, by the John A. Frye Com-

pany, which he thinks is in Massachusetts. As to whether any of these lines he just mentioned, or any of the shoes he buys from the various other manufacturers than Brown, conflict with the lines that he carries of Brown in any of his three stores, in price and quality, the witness said, in general, yes, but as to the types, not appreciably. In other words, a shoe can be competitive and in the same price line and be quite a different type of shoe, and as a result not conflict. Hush Puppies, for instance, \$10.95 shoes are the same grade as Pedwin shoes but quite a different type. Hush Puppies has a very great acceptance to the public which influences him a great deal.

The witness thinks he said they had two Florsheim signs and another one in the making. The two that are in use are outside signs; the other one will be as soon as it arrives. He has inside signs also. In addition to the Florsheim signs the witness has a Smith sign. It is his, he bought that himself. In his Montgomery Village store he has a [fol. 600] Buster Brown outside sign. It is probably 3 by 3, something like that. In other words, downtown he has a Smith Shoe Store and a Florsheim sign, in the Montgomery Village store he has a Smith Shoe Store, a Florsheim sign and a Buster Brown outside sign. In Ukiah he has a Smith Shoe Store sign and he will have a Florsheim sign on that store in a matter of a month. He has a sign on the side of the building, it being a corner building, which names many of the brands which he carries in that store, including the work shoe brand. Those are all the signs. The last one is painted on the building, something they did themselves. The Buster Brown sign was given to him by the salesman.

The witness has used the architectural services provided through the Brown franchise program on 2 stores; one time in downtown Santa Rosa and two times in Montgomery Village, when the store was first established, and the second time when it was enlarged. The witness finds the use of the architectural services very helpful.

He has not had occasion to make a loan from Brown Shoe Company. He doesn't borrow from anybody. They give him credit on the shoes. As to whether it is a credit arrangement that is different than that given to the witness' stores by other sellers of shoes, he said only to the degree that their terms might vary. Brown's credit to

him is not more favorable. He buys shoes on regular terms. Some manufacturers have considerable terms on their product, particularly if they are anxious to sell it, so he gets some of those advantages. Brown is not one of those manufacturers. Their terms are regular. The only terms he gets from Brown is if they preship ahead of scheduled date.

The witness mentioned that there are approximately 10 other stores in Santa Rosa which sell shoes exclusively. Probably more than 5, 6 are family shoe stores. Not any of those 6 are on the franchise program of Brown or any other manufacturer to his knowledge. Four of those are retail chains. The other two are independent retailers.

[fol. 601] IRVING D. CHAPMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives at San Rafael, California, and owns 2 retail shoe stores each named Chapman's Shoe Store. There is a store located in San Rafael, and a store in Novato, California. The population of San Rafael is approximately 20,000. The population of the trade area from which he draws is in the neighborhood of 100,000. The witness would say there are around a dozen to 15 shoe stores or outlets that sell shoes in the City of San Rafael.

The population of the trade area around Novato is 18,000 to 20,000, to his best estimate. There are 5 shoe outlets in that area.

His store at San Rafael is on the Brown franchise program. It went on in 1922 or 1923. He purchased the store in 1952, and continued it on as a franchise store. The witness acquired the store in Novato in February of 1958. It is a franchise store and became one at the time he acquired it. He opened it as a new store. Actually, there had been a shoe store there, but he didn't buy their stock.

Mr. Chapman started in the shoe business when he was in high school working for a store which he later acquired in San Rafael. He worked there while going to school

for about 3 years, and perhaps a year and a half after he got out of high school. At that time he left to go to work for a department store, also in San Rafael. He worked for the department store a little over 21 years. His final position with the store was General Merchandise Manager, a position he held about 8 years. He went back into the shoe business in 1952.

He handles almost the same Brown brands of shoes in both stores. In his San Rafael store the Brown lines are Naturalizer, Life Stride, Pedwin, Roblee, Buster Brown children's shoes and Robinhood. In his Novato store he carries all of those except Naturalizers. Other brands of shoes in the San Rafael store are Spaulding, Evans, Hush [fol. 602] Puppies, and Wienbrenner. In women's shoes he carries Panaljo, Spaulding, Edith Henry flats, the Vogue Shoe Company, and lines of slippers. In his Novato store he carries Wolverine and Wienbrenner, Acme boots. He also carries Acme boots in San Rafael. He carries Panaljo and Vogue.

As to whether those other brands of shoes that he has listed conflict in his opinion with Brown brand shoes, in that they are of the same type and price range, the witness said, yes, they do. He would say that his Vogue flats would conflict with the Buster Browns, the narrow Deb flats, Panaljos—Evans and Spaulding—certainly would conflict with Roblee. In one or two isolated cases he carries the same patterns of Brown in the conflicting lines he just named. As a general rule he does not.

His fieldman presently is Art Wensel who has been calling on the witness 6 to 8 months. The fieldman in his territory before that was Lou Robbe. Lou Robbe was in his store at least 8 to 10 times a year. The services he performed at that time were primarily accounting. He helped the witness set up his seasonal opening, did his year-end audit, and advised him in bookkeeping procedures. The witness discussed the shoe business with him at those times.

Mr. Chapman's wife makes out the monthly reports on the Brown program, also the open to buy. He uses the Brown franchise program record system. He buys group life insurance through the Brown program. He has not made any comparison with what similar insurance would cost if obtained locally. He carries group business insurance. He obtains that through the Brown franchise

plan. As to whether he made any cost comparison with that, with a same or similar insurance if obtained locally, the witness said, not recently, but he has in the past. When he first purchased the store, he did make a superficial comparison at that time. His memory tells him from 20 to 25 per cent savings. This would be less than \$100 in the annual premium cost. He would say close to \$50 probably.

The witness has used the architectural services available from Brown on two occasions, in 1954, when he built the [fol. 603] new store in San Rafael, and in 1960 when he remodeled an addition to his present store. He has not obtained any estimate of what the value of those services was to him, or what the cost of similar services would have been. As to where he would have obtained those services, if not through Brown, he said, his builders, at the time he built his store, offered the services. There would not have been any charge for that. He does not obtain the window trim services available on the Brown franchise program.

The witness carries canvas and rubber footwear, both United States Rubber Company and Ball Band made by Mishawaka Rubber Company. He obtains sufficiently similar items so that he can compare prices from those two firms. He has purchased from the Mishawaka Rubber Company in the past, before he was in business himself, so he is familiar with their line. Prices for the same quantities are identical. He does not have any reason to believe that as a member of the Brown franchise program he receives any special discount or special terms from the U. S. Rubber Company that he could not get if he were not on the Brown franchise program. No one from the Brown Shoe Company ever tried to coerce him to buy from the U. S. Rubber Company. No one from Brown ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown ever told him to get rid of outside or conflicting lines. No one from Brown Shoe Company told him that he must carry certain Brown lines in all the time that he has been on the Brown franchise program.

Q. Do you have a written franchise agreement, Mr. Chapman?

A. Yes, I think I do.

Q. Do you ever refer to it?

A. No.

Q. Has anyone from Brown Shoe Company ever referred you to it?

A. No.

Q. Has anyone from Brown Shoe Company pointed out any provisions to you and asked you to adhere to them?

A. No.

Q. Does the franchise agreement carry any importance to you in your opinion?

A. No.

Q. What is your understanding as to when you can leave the franchise program?

[fol. 604] A. I have no understanding at all. I assume that if I wanted to get out or decided to leave tomorrow, I could leave.

As to why he is on the Brown franchise program, he inherited it when he purchased the present store. It had been operating under that plan, and it appealed to him, so he saw no reason to change. The things that appealed mostly to him were, first, the concentration, he is a great believer in concentration of lines, and secondly, he likes the accounting facility, the monthly reports. They give him all the information that he wants. And he has a lot of confidence in the brand names themselves. He is also a great believer in nationally advertised standard brands. In fact, he goes so far as to say it is the independent retailer's only hope.

As to whether it is fundamental that he likes Brown brand shoes, as far as being on the program, he said the only answer to that is, I wouldn't still be on it if I didn't feel that way.

He practices line concentration because his personal experience throughout some thirty-odd years of retailing has proven to him beyond any question that standard brands that are recognized by people from all parts of the country. The public has confidence in most of those brands. With the rate of growth which they have, people that move in his area have never heard of Chapman's, but they have heard of Naturalizers or Buster Browns or Red Cross,

or whatever the brand might be. He does not think it would help him get additional sales if he had additional brands in the same patterns and prices of his shoes. He was going to say, not in any way proportionate to the additional investment, but he doesn't think it would materially affect his volume at all. There is a parallel to this same principle in handling department store merchandise. He doesn't think it makes too much difference what the commodity is, the principle is pretty much the same. In department stores, in departments that have specialized lines, like a men's clothing department, they made no attempt to have four, five, six lines of clothing in the same price range or type. The only exception to that, perhaps, would be in the departments where [fol. 605] there was no complexity of sizes or amount of stock that had to be carried, such as in a cosmetic department. They might have carried 15 different brands of lipstick, but that would be the only exception. In a cosmetic department which carries additional brands of the same type of merchandise that would increase your sales. The public in that particular case is educated to buy lipstick by brand alone. The investment of carrying 6 boxes of one brand, or one box of 6 brands, is not greater.

As to the result of duplicating brands in the same patterns and price category in a shoe store, the witness said, in the first place, economically it isn't sound at all. That is the major reason, because it would necessitate carrying double the inventory, and with the amount of sizes that he has to carry and the variety of styles, it wouldn't be either economically possible or physically possible to get them into one location. The other objection he sees is that it would confuse his customers. He can't on one hand say that Naturalizers are the right shoe, and then the next day say that Vitality is.

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[fol. 606] He has never been called on by the salesman of Juvenile Shoe Company since he has been in business himself. The witness called on the salesman for Juvenile, but he hasn't called on the witness. The witness was desirous of buying the Clinic line. They were not anxious to sell the witness at all, for the reason that the line was con-

fined to another store named R. H. Macey, a department store. At the time he called the salesman did not attempt to get the witness to buy Lazy Bones shoes. There was no attempt to make him buy Lazy Bones shoes at all. The witness had bought the line, both Lazy Bones and Clinics, from the department store he was in. The store later became Macey's. They inherited Lazy Bones. He wouldn't get them. He is not interested in Lazy Bones because he [fol. 607] doesn't feel as though he has particular need of that type of shoe. There are other lines in his store that supply that particular need. In this Clinic shoe, there happens to be a space that he has, an opening for it, and it is a specialized business of theirs.

Mr. Chapman has been contacted by salesmen from the Deb Shoe Company. He purchased their shoes, when he first opened the store in 1954, for about perhaps 4 or 5 seasons, 2 years at least. No one from Brown asked him to discontinue. He did discontinue because he wasn't satisfied with the line. It had no relation to the fact that he was on the Brown franchise program. He wasn't satisfied with the line because it wasn't a profitable line. He had difficulty in selling the shoes. He had never been called on by a salesman from Freeman Shoe Company. He doesn't know whether that shoe is carried in San Rafael at the present time. He has never been called on by anyone from the Weyenberg Shoe Company. He has never been called on by anyone from the Huth-James Shoe Company. He has never heard of the Leverenz Shoe Company.

The witness feels no obligation whatsoever to Brown as a franchise dealer. The fact that he is on the Brown franchise program never has made him hesitate in buying any outside lines that he decided for other reasons to buy.

Cross-examination.

The witness definitely would not hesitate because he is on the Brown franchise program to buy any non-Brown brand line. He wouldn't hesitate to buy any line that he wanted to buy if he felt it was going to be profitable to him.

In San Rafael there are about a dozen shoe outlets. It is fair to say that about half a dozen are family shoe stores. There are only two of the 6 that he can think of right

now that are chains, the rest are independent. Of the 5 shoe outlets in Novato, 3 of them are family shoe stores. All 3 are independents, no chains. All three consider themselves quality retailers. The 4 family independent shoe stores in San Rafael are all quality. Only the chains are of less quality than his store.

[fol. 608] The witness used the architectural services provided through the Brown franchise program, even though he could have gotten them at no charge from his builder. He felt the services were more specialized and perhaps it would be to his advantage to have them. The building and the rest of it could have been done by the same architect. He doesn't have any recollection specifically. He knows at the time he negotiated with the builder, the architect services were part of the plan. It consisted of building, financing and architectural services.

The witness' purchases from Brown have varied from about 58 to 62 per cent of his purchases over a period of the last 4 or 5 years. He would say that he concentrates on Brown's lines. He obtained a loan from Brown once. He thinks it was \$6,000. That was about 5 years ago. At that time his business was expanding and he used the money to purchase expanding stock. He doesn't remember the rate of interest. He paid the money back on time. He doesn't remember the length of the loan. He paid it back on a monthly basis, on a series of monthly payments.

As to whether line concentration would prevent an independent retailer from having a different brand as his principal brand in each of the three categories, men's, women's and children's shoes, the witness said, if he bought the men's shoes from Company A, he didn't necessarily have to buy his women's shoes from Company A. There is nothing that would prevent that.

Redirect examination.

The loan the witness testified to was not tied in any way to the purchase of Brown shoes, or the non-purchase of other lines of shoes. A portion of the proceeds of the loan went to buy non-Brown shoes.

When the witness was testifying with regard to 6 family shoe stores in San Rafael, that was in the city limits itself.

The witness has a report from an organization of which

he is a director called the Marin Development Foundation. [fol. 609] They have monthly reports that list information of the type, pertaining to the number of shoe outlets in Marin County. In Marin County there are 22 shoe stores. There are approximately 58 department stores, general stores, most of which carry shoes, in addition to the 22 shoe stores.

There is an advantage in buying his primary line of women's, children's and men's shoes from one supplier. The witness said, the working with the company itself, the sales setup, the additional aids that we get through our fieldmen, coordinating those lines, where we can get information about other stores in the same type of business that we are in, and the progress that they show. We have some barometer to measure ourselves by. It simplifies record keeping.

July 20, 1961

DON A. HANSON, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Burley, Idaho. He is a shoe store manager for Hudson Shoe Stores, Inc., and has held that position since October, 1956. The Hudson Shoe Store in Burley opened October, 1956. That shoe store is on the Brown Franchise Program. It became a franchise store the day it opened. The witness has had 17 years' experience in shoe retailing. At this time a varied number of lines of shoes are carried in the store. For Brown brands they have Naturalizer, Life Stride and Smartaire. Those are the ladies' high fashioned lines. They have Naturalizer, Life Stride, Glamour Debs and Robinettes for women's casuals. They have Buster Brown and Robin Hood for children's shoes. In men's shoes, they have Roblee and Pedwin.

In the non-Brown brands, ladies' novelty shoes, they have Deb, Paradise Kitten and Godman. In children's shoes they have Stepmaster. And men's shoes, they buy

[fol. 610] some Briarcliffs from International Shoe Company and some Allen Edmonds which is a high grade men's line. Then they have Red Wing work shoes, and boys' boots. They have Acme, Frye and Hyer cowboy boots. They carry mostly U. S. tennis shoes and brands made by U. S. There is a Beacon Falls Brand. We also carry a few Dags which are made by General Shoe Company. They are canvas and rubber footwear. And just recently we have taken on the line Wingdings. As to professional women's white shoes we carry Joyce and one from Juvenile Shoe Corporation, "Clinic."

In connection with the Brown Franchise Program the witness makes out monthly reports, and an Open-to-Buy. He definitely uses the record system available through the Brown Franchise system. He does not obtain group life insurance from the program. He does not obtain any group business insurance through the Brown Franchise Program. He carries group business insurance locally. He has not personally had an occasion to make a cost comparison between the insurance that he carries locally and the insurance obtained through the Brown Franchise Program. He has never had occasion to use any architectural services offered by Brown in connection with his Burley store.

He has obtained a loan from Brown Shoe Company. The loan was made at the time they opened the Burley Store, and it was for \$25,000. The term of the loan was three years. The obligation was to pay it off in even monthly installments. He had a schedule of payments set up. The loan was paid off in two years and three months. He was charged five percent interest. The loan was not tied in, in any way, with the purchase of Brown brand shoes or the non-purchase of other brands. Approximately \$5,000 of the loan was used for remodeling and the balance was used to buy Brown shoes and other brands, on about a 60-40 percent basis.

The witness would say about 60 percent of his sales now are on Brown brand shoes and about 40 percent are on other shoes, if we exclude rubber goods and canvas and speak of leather shoes.

[fol. 611] No one from Brown Shoe Company ever told the witness that in order to join or remain on the Brown Franchise Program he could not carry an outside or con-

flicting line of shoes. No one from Brown ever told him that to remain on the Program he must get rid of an outside or conflicting line of shoes. No one from Brown, in connection with the Franchise Program, told him in order to join or remain in the Program he must buy certain Brown line or lines.

The witness does not have a written franchise agreement. His understanding is they may leave the Brown Franchise Program any time they choose. There is no limitation at all. They have no obligations whatsoever to Brown as a member of its Franchise Program. They are on this Program because they choose to be. The Brown Franchise Plan to them means a way of doing a more profitable business through proper record keeping and that sort of thing. If they went off the program he would certainly continue to buy Brown brand shoes.

He buys Brown brand shoes because through the 17 years of his experience in the shoe business he has had most satisfactory dealings with Brown Shoe Company. And he firmly believes that Brown shoes give his customers the best dollar for dollar value that can be spent on shoes today. In many instances he has even had salesmen from competitive firms tell him that it is real hard to beat Brown Shoe Company's prices for the quality they put out.

With regard to the record keeping system the witness uses through the Brown Franchise Program, he has never seen a program that is any more complete. If he left the program he would just duplicate it for himself and continue. He knows of no reason why he couldn't duplicate those records himself. They are very simple and easy. That is why they like them. The cost of duplicating the records would probably be very low. It would just be a matter of printing up a few sheets.

Q. Does the term "line concentration" carry any significance to you with regard to shoe retailing?

[fol. 612] A. It definitely does because through "line concentration" you definitely implant a name in your customer's mind. For instance, in Burley we have become known mostly, by our customers, for Life Strides for women and Buster Browns for children. We couldn't have done that if we had not concentrated on and bought the line as a line. And it's much more profitable to buy a line as a line,

then you don't get conflicting items. For instance, if I had one shoe from another company that was very similar to the shoe that I had from Life Stride, I would have duplicate inventories and might not have sizes in either to fit the individual customer. Whereby, if I had the same number of pairs in the one shoe, I would have plenty of sizes to fit anyone that walked into the store.

Q. Are there limitations on the number of shoes that you can carry in inventory?

A. Only on my ability to sell them.

Q. Does that, in effect, impose some limitation on how many shoes you will or want to carry in your inventory?

A. Oh, yes.

Q. Does carrying additional brands of the same patterns and in the same price range have any effect upon the sizes of shoes that you can carry in your inventory?

A. Oh, yes. Because if you buy a size range in one and a size range in another, that takes away from the pairs that you are open to buy. Consequently, you can't buy as many pairs or as many sizes in either instance.

Q. What, in your opinion, is the effect on having fewer sizes and more brands in the same patterns?

A. Well, there is definitely a loss of sales. You have more inventory; consequently, it doesn't turn as quickly. It just isn't good business.

Q. Do additional brands in the same price patterns and the same price category, in your opinion, result in increased sales?

A. Pardon me, state the question again.

Q. Do additional brands or more than one brand of shoes in the same pattern and price category result in more sales of shoes?

A. Absolutely not. It has the exact reverse effect.
[fol. 613] Q. Why?

A. From the standpoint that I just gave. First of all, you can't carry enough sizes in either brand. For instance, a lady will come in and even though the shoes are similar, one may have a red dot on the bow and she prefers that one. You go to the shelf and you don't have her size in it but you do have it in the other brand. She is going to look around for the red dot where if you just had the one to choose from she would have been happy with that to begin with.

Q. So you sold her on style but not on size?

A. Right.

Q. And couldn't make the sale?

A. Yes It limits your sales ability.

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[fol. 614] They carry the Clinic line of professional women's shoes made by Juvenile Shoe Corporation. The witness was shown Commission's Exhibit 138 and his attention was directed to page B thereof. The figures opposite the store known as Hudson's, Burley, Idaho are correct pairage figures for their purchases from Juvenile Shoe Corporation for the years 1957, 1958 and 1959.

Q. In connection with the purchase of Clinic shoes, the purchases were 163 pairs in 1957, 152 pairs in 1958 and 125 pairs in 1959, showing a slight decrease. Will you give the Court the reason for that decrease?

A. Well, originally we took on the line of "Clinics" because we felt it was a good name and a name that everybody knows in nurses' shoes and we took it on in good faith. But in any line of shoes, no matter how good they are, certain manufacturer defects do come up which most companies will stand behind 100%. But in every instance, during the first two years of my business with them, whenever we would send a pair back to the Juvenile Shoe Corporation we would get them back saying that "It wasn't a manufacturer defect and there was nothing we could do about it."

In fact, only once do I ever remember getting any credit from the Juvenile Shoe Corporation. Consequently, I decided then and there if I had to stand behind all of my own adjustments myself and stand the loss, it would be more profitable for me to channel that same business into [fol. 615] another line that would be more fair. I did just that. We are now selling in companion with the Clinic line.

Q. What line are you selling in companion with the Clinic line?

A. The Joyce type of nurse's oxford. Consequently, the increase in sales is shown in the Joyce line instead of in the Clinic line.

Hearing Examiner Creel: What company makes Joyce?
The Witness: United States Shoe Corporation.

By Mr. Taylor:

Q. Has anyone from the Brown Shoe Company ever attempted to dissuade you from carrying the Clinic line of shoes?

A. No.

Q. The defects that you referred to, were they, in your opinion, manufacturer defects on the occasion that you wished to return to shoes to the Juvenile Shoe Corporation for credit?

A. Yes. We don't return them unless they are.

Q. Have you ever been asked by a Juvenile Shoe Corporation salesman to buy the Lazy Bones line of shoes?

A. Yes. When we first opened the "Clinic" line I wrote Mr. Joe Wolleck a note saying I would like to see him and he came to see me.

Q. Who is Mr. Wolleck?

A. He is the representative for the Juvenile Shoe Corporation in our area.

He came to see me and I asked him if I could have the "Clinic" line and he intimated to me that they don't open to people who don't buy their children's shoes too, which is the Lazy Bones line.

Q. How did he intimate that to you?

A. Just by clearly saying that "Normally we don't open to an account that doesn't buy both lines."

So I naturally assumed that I wasn't going to get the line and at the last moment he said, "Well, in this instance, we will let you because it's a smaller town and we would rather have just the 'Clinic' account than nothing." That was after I finally told him that I just wasn't going to buy the Lazy Bones line.

[fol. 616] Then afterwards, when he had shown me the line, I told him I just wanted to start out like I normally do with just one pattern to see how well it goes.

Q. Are you referring to the Clinic line now?

A. Yes. And after I had picked this one pattern, he said, "Well, just for that pattern, we can't open to you. You must at least buy this pattern and this pattern and in sizes." He actually told me the sizes that I had to buy.

Q. What did he mean by "and in sizes"?

A. Buy a complete size range. Because they feel if you don't have the line on a complete range of sizes, you may as well not have it.

Q. I call to your attention that this Commission's Exhibit 138B shows no purchases of Lazy Bones, Jr. or Lazy Bones, Sr. shoes from Juvenile for the years 1957, 1958 and 1959. Have you ever purchased any Lazy Bones, Jr. or Lazy Bones, Sr. from the Juvenile Shoe Corporation?

A. No, sir.

Q. Has anyone from the Brown Shoe Company ever attempted in any way to discourage you or dissuade you or direct you against buying shoes from the Juvenile Shoe Corporation?

A. No.

Q. Is your reason for not buying Lazy Bones, Jr. or Lazy Bones, Sr. in any way connected with the fact that you are on the Brown Franchise Program?

A. No.

The witness carries shoes from the Deb Shoe Company. He cannot give the exact figure for pairs of those shoes in inventory now, but in his open-to-buy for Fall he bought approximately 300 or 350 pairs of novelty shoes, and in flats or back to school type shoes, about 200 or 250 pairs. No one from Brown ever attempted to discourage him or keep him from buying shoes from the Deb Shoe Company in any way.

He has purchased maybe one or two pairs of shoes from the Freeman Shoe Company for the Burley store. He doesn't recall purchasing any great amount. He hasn't purchased more shoes from Freeman because they are carried by another company in town. This makes a considerable difference to him in deciding whether to buy a line [fol. 617] or not, and probably they wouldn't let him have it anyway. They normally allow only one account in town. The last time a Freeman shoe salesman called upon the witness and attempted to sell Freeman shoes was probably 3 or 4 years ago. The Freeman salesman sells a line of house slippers and he calls upon the witness every year for that. The witness buys the Manistee line of house slippers from him. It's a fur lined house slipper.

The witness has been called on by salesmen from the Weyenberg Shoe Company. He can't remember the last time one called. It has been a long time ago, probably 3 or 4 years. The witness did not buy any shoes from him at that time because he is pretty well established in another account in Burley, Roper's Men's Store.

He has never been called on by a sales representative from Huth-James Shoe Company to his knowledge. He doesn't remember ever being called on by a representative from the Leverenz Shoe Company.

As to who and what determines the brands of shoes that the witness carries, he said, I figure out my open-to-buy and the number of pairs that I have to buy in each category and that determines the number of pairs that I have to buy, and then I determine what to buy from those. The only thing mandatory about this open-to-buy is whether I stay in business or not. Through this open-to-buy you buy inventories that you sell instead of getting loaded to the extent that you don't sell your inventory within the period that you have to sell it in. At the end of the season if you have an inventory and no cash, you can't buy for the next season.

As to whether the Brown Shoe Company, through the use of this open-to-buy in any way restricts the witness from buying outside lines or forces him to buy Brown lines, the witness said, absolutely not. We buy what and when we choose. The Brown Shoe Company does not force him to make out an open-to-buy in connection with the franchise program. He thinks, from some of the letters he has received from Dick Johnston, that there are probably some franchise stores that do not make out this open-to-buy. This is a voluntary thing with the witness. He [fol. 618] thinks it is very helpful. Without it he doesn't suppose he would be in business very long, because it helps you to keep your inventory balanced so that you have the shoes that are selling instead of having shoes that are lying dormant on the shelves.

The witness has no hesitancy, in connection with the open-to-buy, about buying non-Brown brand shoes. There is nothing unique about the open-to-buy form that could not be duplicated by the witness. He thinks it would be very easy to duplicate. He thinks that he could get some system that would work out equally well.

Cross-examination.

The 60 percent figure that the witness mentioned, which is the percentage of Brown shoes that he has, is probably based upon dollar sales. Within a few percent, the percentage of Brown shoes in his inventory would be the same. There are four salesmen in his store selling shoes. His approximate dollar sales last year were a little over \$110,000. He has the biggest shoe store in Burley. There is only one other family shoe store in Burley. However, there is another family outlet in a department store that carries about the same grade as they do. The other family shoe store is an independent. He doesn't know whether it is on a franchise program. Originally it was. It was an International store. He doesn't know whether it still is.

The witness has worked for a Brown Franchise store in the past. He started out in the shoe business for Hudson's. The store the witness began in was in Idaho Falls. It was a Brown Franchise store, and it was owned by the same corporation that owns the store he is now in. That corporation has four outlets. This other Brown Franchise store that the witness started working for did not have a Brown Franchise Contract. He has never seen a Brown Franchise Agreement.

The name of the corporation the witness works for is Hudson Shoe stores, Inc. They have a store in Idaho Falls, one in Burley and two in Twin Falls, Idaho.

[fol. 619] The witness testified that he still carried the Clinic brand of Juvenile shoes in his store. He is not certain what his pairage was last year, but he thinks it would probably be up slightly because they have a new hospital. He would say probably around 140 pairs. He is still dissatisfied with their service but as long as his customers call for Clinics and they don't take them away from him, he is going to keep them.

They carry around 500 pairs of Deb shoes in inventory. He could buy similar shoes from Brown. He gets those from Deb because Brown is a down-the-middle of the road type of shoe and Deb is very high fashioned. Consequently, they cover the high fashioned field with Deb. It would be the same or similar reasons why they would carry all of these other brands of shoes too, other than Brown. He doesn't believe in duplications. All these

other brands are fringe items and things that he needs that Brown doesn't supply.

The Brown Franchise fieldman does not help the witness fill out his open-to-buy. In fact, the witness doesn't see him very often, maybe once a year. He saw him this year in Seattle at the shoe show.

He does not have any neon signs in his store which are given to him by Brown. He has a Buster Brown clock but he had to buy it. As to whether he uses the window trim service provided through the Brown Franchise Program, he said, they provide show cards to everyone that buys the shoes that pertain to those show cards and we use them when and if they work in with our plans; in merchandising. As to whether he uses the window trim service that Brown provides where they come around and setup your display the witness said evidently not. I don't even know about it.

Mr. Taylor: I would like to make one correction on Mr. Timony's question. Brown does not go around and set up these displays. And there hasn't been any evidence in the record that they do.

[fol. 620] Redirect examination.

In connection with the establishment of a new hospital in his area and the slight increase that this resulted in, in the purchase of Clinic shoes by the witness, the main increase occurred in purchases of Joyce women's professional shoes. It occurred in the Joyce line because the men on the floor and he encouraged people to buy the Joyce line, because of the bad service they got from Juvenile Shoe Corporation.

HOWARD B. MICHELS, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Walla Walla, Washington. He is engaged in the shoe business. He operates a family shoe store in Walla Walla, Washington. The name of that store is Wilton's. He is a partner and manager of the

store. Wilton's store is on the Brown Franchise Program. It has been on the program ever since he has been connected with the organization, dating back to 1932.

In the Brown lines the store carries Air Step, Life Stride, Smartaires, Glamour Debs, Robinettes, Robin Hoods and Buster Browns. The men's shoes are Roblee and Pedwin. As to other brands, they carry Red Wing shoes, and they have purchased some Mark Angelo's for fall. They have, in the past, carried Troyling and Deb shoes and they are still carrying Prima Footwear. They have had Stepmasters. They carry some H. C. Godman shoes and buy some Cantilevers. That covers most of the footwear line. They have somewhere around 85 percent of their business in the Brown brand lines.

The witness has the record system under the Brown Franchise Program. He does not use the regular Brown form on open-to-buy. He makes up his own, which is a little less complicated. He has been doing that about 10 years. The use of the Brown form does not compel him to buy any particular line of shoes. As to what deter-[fol. 621] mines what line of shoes the witness chooses to buy in his store, he said, my own judgment, the appearance of the shoes, and whether I could sell them and make a profit on them. Being on the Brown Franchise Program does not in any way affect his judgment or freedom of choice.

They have never used the architectural service as a part of the Brown Franchise Program. They do use the window trim service. He thinks they pay somewhere around \$600 a year for the service. They use that service because they feel that it is something that saves them time and effort and money. They must advertise to promote the branded lines of merchandise. This is a program that is available and they don't have to waste their own time putting it together and getting it into operation.

They have never borrowed money from Brown Shoe Company. The witness subscribed to the group life insurance offered under the Program for himself. As to the business casualty group plan made available under the Brown Franchise Program, he said, we carry part of it under Brown and part of it under another company.

They carry U. S. Rubber Company products in canvas and rubber footwear. U.S. Rubber has a nice line of mer-

chandise that appeals to them and fits into their program. They have always done business with them. Being a store on the Brown Franchise Program does not in any way require them to purchase U. S. Rubber products. He knows of no difference in the price they receive from U. S. Rubber as a Brown Franchise store, and the price they would otherwise receive. He has heard of no difference from his colleagues or competitors in the shoe business at home who also carry U. S. Rubber products. He has never checked the terms they received. They have talked to him about it, and if there is any difference, he knows nothing about it.

Brown Shoe Company has never told them that they could not carry an outside or conflicting line of shoes. A conflicting line is an item that would be similar in price, quality and retail value. The styling and detailing would [fols. 622-623] be similar, whereby you would be in competition with yourself, with another brand line of shoes.

Line concentration means confining your purchases to the fewest quantities of branded lines of merchandise that you can, in order to maintain yourself in the business, and present the right styles, colors and types of merchandise to your consuming public. If you do not buy enough merchandise, you will lose sales, and if you buy too much merchandise, you will go broke. Line concentration is a type of merchandising policy that enables them to operate a business successfully. He think the records have proved that it has been a very efficient operation.

They do not have a written franchise agreement. He could terminate their relationship with the Brown Franchise Program any time he so desires. It is not necessary for them to be on the franchise program in order to buy Brown shoes. They are on the program because of the benefits which they get from it. For one thing, most of the merchandise is shipped from a central point, and the shipping cost to the West is quite high. More shipments can come through in hundred pound lots, where by buying from various manufacturers scattered throughout the country, the delivery costs would be greater. There is less chance of duplicating patterns and styles in the merchandise by concentrating on one line. That is why they concentrate on Brown brand lines.

They are on the franchise program because it is profitable to them. It fits their type of business very well. He would drop a Brown brand or line of shoe if it did not perform satisfactorily. His participation in the Brown Franchise Program would not in any way restrict him in making that decision. There were some make-up shoes made under a special make-up department of Brown Shoe Company which were not profitable for the witness because of the quantities that they had to cover, so they dropped them. That was under a separate brand.

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[fol. 624] They do not carry a brand named Troyling now. They thought at one time that they needed a line of higher priced women's shoes, but found they were not making any money on those particular shoes and were not getting a return on their investment, so they dropped them. No one from Brown required them to drop those shoes. It was their own decision. Being on the program had nothing to do with it whatsoever.

They carried Deb shoes once, about 8 to 10 years ago. They are no longer carrying them. As to why they were discontinued, he said, we didn't feel the shoes fit as well or did as good a job of wearing and satisfying our customers for the amount of money that we had to sell them for. The witness made the decision to drop them. The fact that their store was on the Brown Franchise Program had nothing whatsoever to do with that decision. No one from Brown asked him or attempted to force him to drop that line of shoe. No one from Brown ever told him that they could not buy Deb shoes.

As to whether anyone from Brown Shoe Company ever told him that they could not buy any outside line of shoes, the witness said, we have not been restricted in our buying in any way, shape or form.

They have never bought any Juvenile shoes. The salesman has never called on them to sell them Clinics or Lazy Bones. They are carried in his community by a family shoe store.

They have never carried any Freeman shoes, manufactured by the Freeman Shoe Company. At one time a salesman from Freeman called on him. That was ap-

proximately 8 to 10 years ago. He did not buy any shoes from the salesman. The reason was that they were being carried by another store in town. That would make a difference in his decision. He said, in a town our size, if I couldn't have exclusive shoes in the one line, I would not want it. Being on the Brown Franchise Program had no influence on his decision not to buy Freeman shoes. No one from Brown told him he could not buy Freeman shoes.

They have not carried any shoes manufactured by the Weyenberg Shoe Company. To the best of his knowledge, a salesman has never called on him to sell those lines of shoes. At the present time, one line is carried in a store in his community. That just occurred in the last year. Prior to that time, they had been handled by various dealers here and there in his community.

They have never carried any shoes from the Huth-James Shoe Company. To his knowledge, a salesman from that company has never called on him. They have never carried any shoes from the Leverenz Shoe Company. A salesman from that company has never called on him.

As a Brown Franchise Dealer, the witness does not have any obligation to Brown Shoe Company.

[fol. 626] Cross-examination.

The window trim service is background material which is designed to add attractiveness to the window and invite the customer to look at it. It is generally designed so that it identifies certain branded lines of shoes which they buy from Brown. It is a form of advertising designed to promote business. There is a general picture outline to show you how the unit looks in the window so you will know how to put it in when it arrives in your store. The placing of the shoes is left up to the individual. His store gets four of these a year. They have the spring trim, the summer trim, fall trim and the Christmas trim. This does not include the services of somebody to help you set it up. They have to do their own work. They get instructions on how to install it.

The population of Walla Walla is around 25,000.

RAY J. KETTMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Auburn, Washington. His business is the retail shoe business. He has been engaged in that business 9 years. He owns Kettman's Shoe Store in Auburn. The population of Auburn is 12,000. The population of the trade area that his store in Auburn caters to, is around 30,000. He opened the store new, in 1953. It is on the Brown franchise program. It went on the program in 1957. He was using Brown brands partially before that time. Other brands in his store were Red Wing Shoes, Weather Bird, Velvet Step and Winthrop. He changed from those brands to Brown brands, before he came on the Brown franchise program. Changing those brands was not a condition of his being taken on the franchise program. The witness made the decision to change those prior brands. As to the basis for his decision, he said, I felt that for the money the selling price and the type of customers that I was catering to, that the Brown lines would do a better job for me. I felt they were better shoes.

[fol. 627] Brown did not require him to take on any Brown lines as a condition to go on their franchise program. Since he has been on the Brown franchise program, he has never been told that he could not carry conflicting or outside lines of shoes. He has never been asked to drop any outside lines or conflicting lines of shoes.

He opened a shoe store in Burien, Washington, on March 9th of this year. It is on the franchise program. It was opened as a new outlet. Brown brands of shoes carried in the store are: Air Step, Life Stride, Risque, Glamour Debs, Buster Brown, Roblee, Pedwin. Other brands of shoes carried in the store are Nunn-Bush, Red Wing, Red Ball Jets from Mishawaka Rubber Company, and Hush Puppies from Wolverine Shoe Company. For fall, he bought Chesapeake and Buckingham-Hecht from a jobber out of San Francisco. He purchased teenage skimmer flats, or flat type of shoes for growing girls and women. He does not carry any United States Rubber canvas foot-

wear. He has never been strongly urged to do so by anyone connected with the Brown Shoe Company.

His Brown fieldman in that area is Mr. Dave Arnold who calls on the witness probably 6 times a year in a business way. At those times they discuss business conditions, they go over his bookkeeping system and try to make changes for the better so that his business will improve and be on a more profitable basis. The fieldman helps the witness analyze performance of his lines. The fieldman does not tell him what lines he has to buy. The fieldman has never made any attempt to dictate to him in any way regarding his purchase of brands of shoes.

The witness makes out monthly reports on the Brown franchise program. He uses the open-to-buy. He does not have to use it. He uses it primarily as a guide. He feels it's the only basis for making a profitable buy for a season so that you won't become understocked and lose sales or overstocked and can't meet your bills. This sort of charts his course as a shoe retailer. He uses the franchise program record system and finds it very helpful. If such a record system were not available to him now, he would [fol. 628] probably take the forms that he now has and have them printed. He knows of no reason why he couldn't do this.

The witness does not obtain group life insurance through the Brown franchise program. He does not, and did not, carry fire and extended coverage or business interruption insurance through the program on the existing store, but on the new store he does. He carries business insurance on the Auburn store locally, because his local insurance man has always taken care of his insurance, not only the store but his personal insurance, too. He bought the business insurance for the new store through the Brown franchise program, because he didn't have enough time. He opened the new store on a very hurried basis. It was also less expensive. He had not made any direct cost comparison. He has had proposals from two different people and the business insurance that he obtained through Brown was approximately \$60 cheaper than what he was offered by an insurance man locally.

The witness has never received any architectural services in connection with being a Brown franchise store.

He does not use the Brown window trim service. It is available to him if he wants it. He doesn't use it because he feels that his windows are not suited for it and that he can do as good a job by buying his materials locally and making his own trim. He trims his windows 4 times a year. He has never looked into the cost of such a service locally and how it would compare with the Brown window trim service.

The witness has never been told by anyone connected with Brown that he could not carry an outside or conflicting line of shoes while on the Brown franchise program. He has never been told by anyone connected with Brown that he must get rid of any outside or conflicting line of shoes in connection with the Brown franchise program, or at all. He has never been told by anyone connected with Brown that he must carry any certain Brown line or lines.

As to what determines the lines of shoes that he carries, the witness said, the customers that I am trying to cater to. Also, the price of the shoes, the quality of the [fol. 629] shoes, the fit of the shoes, and the style of the shoes. In my opinion, what I can buy at a reasonable price and make a reasonable profit on. He feels no hesitancy or disability in buying outside lines of shoes as a member of the Brown franchise program. If he determined that he wanted and could obtain an outside line of shoes that would be good for his business, he would buy that line of shoes. No one from Brown has ever attempted to tell him otherwise.

He has a written franchise agreement in connection with his Auburn store. He does not have any for the Burien store. There has been no attempt on the part of Brown to call that contract to his attention or enforce any of its provisions since he entered into it. They have not referred to it at all. The witness has had no occasion to refer to it. His understanding is he can leave the franchise program whenever he wishes.

The term line concentration means, to the witness, concentrating on lines that are not conflicting, and keeping away from duplications at the same price level. It also means having a more profitable operation. Economists tell him that it costs \$25 just to open an account with anyone. Even if you make only one line of purchases on

a new account, it costs you \$25 to get a new source of supply. When you buy, it is very hard to remember everything that you buy. So if you concentrate your lines, you are able to keep from duplicating and becoming competitive with yourself, so to speak. He would not think carrying additional brands of the same patterns of shoes in the same price range increases your sales. It has not been his experience that it would.

As to whether there are any limitations on the amount of shoes that you can carry in your store from a business standpoint, the witness said, through your open-to-buy you can project your sales over to future months so you know approximately how many shoes that you are going to sell in each type of category. So if you have the money I suppose there is nothing to determine how many shoes you can buy. If you buy too many shoes, even if you have the money, you probably would go broke. The effect of excessive inventory on turnover is that there is no turnover. If [fol. 630] you are doing a certain volume of business and you are loaded with inventory, you have no wherewithal to go and buy more.

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The witness has never been called on by a sales representative from the Juvenile Shoe Corporation. Juvenile brand shoes, which are Clinic and Lazy Bones, are carried in Auburn by Barline's Men's Store. It has a shoe department. It's a men's clothing store, but they carry Clinics. They have a family shoe department in the store. They sell men's, women's and children's shoes there.

[fol. 631] The witness has never been called on by a salesman from the Deb Shoe Company. He called them to obtain Deb Shoes roughly three weeks ago. He bought two flats and one heel in the square-toed shoe. Nobody from Brown Shoe Company ever attempted to discourage him from purchasing from the Deb Shoe Company.

The witness was called on by a salesman from the Freeman Shoe Company 7 or 8 years ago. He did not buy the shoes, because he couldn't use the shoes. He was already using shoes of comparable price and quality which he was satisfied with. The shoes he was using were Winthrops.

No one from Brown ever attempted to dissuade him from buying Freeman shoes at any time.

As to why the witness did not purchase Deb shoes before this season he said, I didn't need them. Being on the Brown franchise program did not prevent him or have any effect on his not buying Deb shoes prior to this time.

The witness has never purchased any shoes from the Weyenberg Shoe Company. They have never called on him. Their shoes are carried in Auburn, in Rottle's Department Store. They are carried in Burien where his new store is located by Jaffe's.

He has never been called on by a sales representative from the Huth-James Shoe Company. They are not in either of his towns that he knows of. He has never been called on by a representative of the Leverenz Shoe Company. They are not in either Burien or Auburn that he knows of.

As to whether he feels any obligation to Brown as a franchise dealer, the witness said, well, I would want to help anyone that helped me if it didn't hurt me. I feel that being on the Brown franchise program and obtaining the benefits that I do by being on the program, primarily the bookkeeping system, I would want to do as much as I could for them in reciprocal trade, so to speak. He is not required to do this by the Brown franchise program. This is just his personal feeling. He said, it's like anything else. If you did something nice for me I would want to do something nice for you if it didn't harm me and if I had the opportunity to do it. As far as I am concerned, I have [fol. 632] had nothing but fine relationships with the Brown Shoe Company.

The witness does not feel that he is bound to buy Brown brand shoes. If Brown brand shoes didn't perform for him he would change. He does not know to what, he said, but if they didn't perform I certainly couldn't use them. I am in business to make a livelihood for myself and my family and I certainly have to have shoes that I can make a profit on to do that job.

Cross-examination.

The witness would say around 78 to 80 per cent of his leather shoe inventory is in Brown lines. He would guess

that somewhere between 70 to 75 per cent of his entire stock is in Brown lines. That figure would be pretty close to the same if he took the percentage of his dollar sales for last year in Brown lines. He does not think the outside lines of shoes that the witness has in his store conflict with Brown lines.

The witness signed a Brown franchise agreement in his Auburn store. As to whether he remembers at that time promising to concentrate on Brown shoes and to have no conflicting lines, he said, I don't recall what the exact wording is, but if that is what it says, that is what I signed. He has concentrated on Brown shoes and has no conflicting lines in his store. As to whether one of the reasons for this is that the witness feels that he should do something for Brown Shoe Company in return for the benefits and services that they provide him through the Brown franchise program, the witness said no.

Counsel for the Commission said, I was just trying to summarize your testimony. I thought you testified that you felt a certain obligation toward Brown, the same as you would toward anyone who was giving you something. For instance, if you gave one of your customers credit and said, "You can pay me next week for the shoes instead of right now," you would feel that he would be doing the wrong thing if he went to your competitor to buy shoes. Wouldn't you say that is substantially correct? The witness would say that was partially right. He actually said [fol. 633] that if it didn't harm him he would want to do something nice.

The witness received a loan from Brown Shoe Company in April of this year. He used the proceeds to purchase shoes for the Burien store. He would say approximately 70 per cent of those were Brown brand shoes in the original buy.

Redirect examination.

The loan given the witness by Brown Shoe Company was not in any way tied in with the purchase of Brown brand shoes. It was not tied in any way with the absence of non-Brown brand shoes. There was no restriction placed on the loan, either prior to or at the time that he received it,

as to what the proceeds would be used for. His obligation under the loan was to make monthly payments.

The main reasons the witness buys Brown brand shoes are: they are well known brand shoes, they are priced right so that he can make a reasonable profit, and they have the right price structure and still give the type of customers that he is catering to satisfaction and the desire to return for further purchases from his store.

Q. Then what effect, if any, do these benefits that you receive from the Brown Franchise Program have on your decision to buy Brown brand shoes?

A. Really none.

Q. I am trying to get at how important they are in your decision of whether to buy Brown brand shoes or non-Brown brand shoes.

What are the things that you take into consideration in your decision of what shoes to buy?

A. The shoes that my staff and I are able to buy at a reasonable price in order to get a reasonable markup and still satisfy the bracket of customers we are trying to service.

Q. You say this is what controls your purchases of shoes?

A. This is what controls my purchases.

[fol. 634] Hearing Examiner Creel: Mr. Kettman, I believe you testified that you opened your Auburn store about 1953, was that it?

The Witness: Yes.

Hearing Examiner Creel: And at that time you were carrying some Brown lines?

The Witness: No.

Hearing Examiner Creel: Not any Brown lines?

The Witness: No.

Hearing Examiner Creel: Sometime later you took on some Brown lines?

The Witness: Yes.

Hearing Examiner Creel: Did you talk to a Brown man at that time about your becoming a franchise store or did he talk to you about it?

The Witness: No.

Hearing Examiner Creel: When was the first time that you talked to a Brown man about the general subject of your becoming a Brown franchise man?

The Witness: I think it was sometime in 1956.

Hearing Examiner Creel: Well, tell us what he told you the Brown Franchise Plan was, as best you can remember.

The Witness: I called him, as I recall.

I didn't feel that I was in a position to do the job without a bookkeeping system, primarily.

I had been a merchant's service store with International Shoe Company. And, I contacted the Brown fieldman and asked him about getting on the Brown Franchise System and to look at their bookkeeping system, basically.

As I recall, there were no obligations to become a Brown franchised store.

Hearing Examiner Creel: Well, you certainly must have understood that you would take on some Brown lines, did you not?

[fol. 635] The Witness: I already had some Brown lines.

I was switching before I ever talked to Sam Barnett. I think he was the fieldman at that time. I had already changed to Busters, Life Strides and Pedwins. I made these changes before I ever talked to the fieldman about the franchise system that they have.

Hearing Examiner Creel: He didn't go over the agreement with you?

The Witness: No, I don't believe he did.

DAVID RIETMANN, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides at Kennewick, Washington. He is engaged in the retail shoe business and owns and operates two retail shoe stores. They are located in Richland, Washington and in Kennewick, Washington. He has owned the Richland store since 1953 and the Kennewick store since 1958. Both of these stores are presently on the Brown Franchise Program. Each of the stores went on the Program from the beginning of his ownership.

The store in Richland was the opening of a new store, and he opened it on the Brown Franchise Program. He purchased the Kennewick store from another party and then changed the lines to the Brown program. That store had not been on any other type of program. They represented a number of lines but no formal program such as the witness does.

As to whose decision it was to change the lines in the Kennewick store, the witness said, it was our decision. No one from Brown Shoe Company told him that they had to make the change in the lines. As to whether he made the decision to change the lines before he put that store on the Brown Franchise Program, the witness said, we would not have bought the store unless we could have the Brown shoes. It wouldn't have had any effect on whether or not [fol. 636] we could be on the Brown Franchise Program but we did want their brands of shoes for the store.

When the witness said "unless he could have the Brown shoes", he meant if the salesmen from the Brown Shoe Company were willing to sell them. There might be a problem in that regard. If the salesmen already had accounts in the town with other dealers, their lines might not have been open to them. As to whether the witness would have been willing to buy a line that was already in a town the size of Kennewick, he said, on some of the Brown lines we wouldn't mind and on others we would. Kennewick has 16,000 people.

Prior to opening his store in Richland, in 1963, the witness had been in business in Hermiston, Oregon. He opened the store there in 1949 under the International Merchant Service program. They continued on that program until 1952 when they changed to the Brown program. It was their decision. They merely quit using International shoes and bought Brown Shoe Company's shoes. They felt that they would be carrying better shoes and could do a better retailing job. They felt they could go further in the retail business with some of the Brown lines, not only in that store but in future expansion.

The 16,000 population figure for Kennewick, Washington is within the city limits. There is a larger population in the trading area. They are in the Richland, Kennewick and Pasco trading area. Richland has 24,000 people, Ken-

newick has 16,000 and Pasco 16,000. They are opening a store in Pasco. They have purchased it and will open it within a couple of weeks. That store will be on the Brown Franchise Program. That was their decision. There was no requirement put upon them by Brown Shoe Company to put the store on the Brown Franchise Program.

In the Richland store, in Brown lines, they carry Air Step, Life Stride, Smartaire, Buster Brown, Glamour Debs, Roblee and Pedwin. Brands carried other than Brown brands are: in men's shoes, Red Wing, Bostonian and Allen Edmonds, in women's shoes, Deb, Sbiccass, Ed White, Riverside shoes from the Riverside Shoe Corporation, and Frenchies from the Nathan Shoe Company. They carry [fol. 637] an item from a number of other resources too. From the standpoint of the pairage that they sell on an annual basis, 70 to 75 percent of the pairage would be represented by Brown brand lines, in leather shoes.

The brands in the Kennewick store would be the same in most respects as those carried in the Richland store. The same percentages would apply. They also carry Child Life shoes, in Children's shoes, in both stores. The Pasco store will be identical to the Richland and Kennewick stores in regard to inventory.

As to whether he uses the record system under the Brown Franchise Program, they use most of the ideas of the Brown Franchise System. They modify the record system to suit their own particular needs or ideas but it is their guide. They have one individual that has group life insurance through the Brown Program. He does not, himself. They do subscribe to the group business and fire insurance that is made available under the Brown Franchise Program. They do not buy all of the coverage through this insurance arrangement under the Program. They buy inventory, fixture, leasehold and liability insurance. They have their other coverage with a local insurance man. The witness has not made any investigation as to whether there is any saving in cost by purchasing insurance through the Brown Franchise Program. He feels there is some saving, but he uses it primarily because it is convenient. It is not the cost as much as convenience.

They have utilized the window trim service made available under the Brown Franchise Program at a price, but they don't now. They have purchased it for the Pasco

store. In Richland they used the trim service for two years and discontinued it because it was their feeling that with work combined locally they could save themselves money. He feels that way yet today. It was their decision to do that. They used the architectural service under the Brown Franchise program in Richland in 1953, and used that service for the Pasco store this year.

They had occasion to borrow money from Brown Shoe Company in 1953, and they have a loan approved for the [fol. 638] Pasco store. In 1953, the loan was for \$30,000 on a five-year note, with interest at 5 percent. That has been paid off. There was no requirement to buy Brown Brand shoes or to refrain from purchasing shoes of other manufacturers in connection with this borrowing. They used the money to buy inventory and to improve the room and buy fixtures. There was no condition or requirement in connection with the loan that so much of the money had to be used for the purchase of Brown brand shoes. They, themselves, made the determination as to how the loan proceeds would be expended.

They borrowed at the time they purchased the Kennewick store and they have retired that. The situation in reference to the Kennewick borrowing was the same as just described in relation to the Richland store, except as to the amount of money. As to whether there were any obligations to Brown other than the payment of the loan as it matured under the terms of the loan plus interest, the witness said, the same as if I had gone down the street to the bank and borrowed the money. The same answer would apply in reference to the loan transaction in connection with the Pasco store.

They purchase canvas and rubber footwear from U. S. Rubber Company, and for fall they purchased from Mishi-waka, the Red Ball Brand. It will be a new source of canvas footwear in their store. The decision to buy Red Ball was because they have an item the witness likes and he feels that they can do a good job with it. The brand name is Ball brand or Red Ball Jets. It's all one and the same from Mishi-waka Rubber Company. They previously purchased from U. S. Rubber. The reason for buying from U. S. Rubber was that they are a top line in the witness' area. No one from Brown Shoe Company made it a condition to buy from U. S. Rubber as a franchise store.

The witness has never felt they could get better terms or more favorable credit terms by purchasing rubber goods from U. S. Rubber as a Brown Franchise store. When they bought from Mishiwaka for fall, he found out that it is exactly the same as buying from U. S. Rubber, exactly [fol. 639] the same terms. Prices for similar types of merchandise are the same. If it wasn't for the brand, you wouldn't know you were buying anything different.

The witness and his sales people determine the brand lines that they carry in their store. They analyze what their people will buy and that is what they want to buy. No one from Brown Shoe Company ever told him that as a store on the Brown Franchise Program they were required to buy any particular Brown line of shoe. No one from Brown Shoe Company ever asked him to stop or discontinue or to refrain from buying an outside or conflicting line of shoes. As a store on the Brown Franchise Program, there is no feeling on the part of the witness of a limitation on his freedom of action as an independent store operator. There isn't anything different than there would be from any other supplier. They are interested in buying the shoes that they feel they can do the best job with and that would be true of anyone they bought from.

Q. Have you ever signed a franchise agreement in connection with the Brown Franchise Program at any of your locations?

A. We did in Hermiston, Oregon, in Richland and in Kennewick.

Q. Do you have the occasion to refer to that agreement from time to time?

A. I never felt it meant anything and I always threw it away.

Q. Has anyone from Brown Shoe Company ever referred you to that agreement in connection with your store operations?

A. No.

Hearing Examiner Creel: Why do you think they asked you to sign it?

The Witness: I don't know if they themselves would really know.

It was merely stating the lines that we were going to use from Brown and that they were available to us in

town. To me, if next week the lines didn't look good to us, we would be dropping them anyway. So I don't know why they even had that piece of paper.

[fol. 640] By Mr. Burke:

Q. To you it meant nothing?

A. No.

Q. Has it in any way controlled or restricted your operation?

A. No.

Q. What is your understanding as to when you can quit or leave the Brown Franchise Program?

A. We would merely do as we felt at any time.

They have in the course of their operations as a shoe store on the Brown Franchise Program, dropped a Brown line. That occurred about three years ago. They dropped the Robin Hood line. At that time they were carrying Robin Hoods and Buster Browns and they felt they could do a better job by concentrating on one line of children's shoes and they elected to use Buster Browns. No one from Brown Shoe Company attempted to coerce or threaten him to continue carrying this line of Robin Hood shoes. It was their own decision for business reasons.

Line concentration means that their store stands for something to the public. They stand for a brand of shoes that people get to know as something that can do something for them. And to them as individuals, it does something for their store in the way of profit and satisfaction in what they sell. They feel people like to get to know a store for a certain brand, in the case of children's shoes it would be Buster Browns. You can satisfy nine out of ten people with Buster Brown shoes.

The practice of line concentration in merchandising contributes to other aspects of their business. The fewer lines and patterns they carry the more sizes they can carry, which generally provides them with the means to make a greater profit or to do a better job. In the shoe business today it's the size situation within your store that prevents you from losing sales, more so than the pattern situation. As to whether size sometimes is the best pattern that you can have, the witness said, that is certainly

true. As merchants, we are all guilty of spreading too broadly and not having size depth. For example, in our children's shoes, Buster Browns, we probably carry fewer [fols. 641-642] patterns than any Brown store that you go into but we have sizes in those patterns. As a result, we do one of the finest turnover jobs that I know of.

If they chose to carry another line of shoes in the same price, style or pattern category, that would not necessarily increase their sales. It only would if there was something within this line that wasn't available. They would and do on occasion pursue a merchandising practice of carrying another line of shoes that conflicted with or duplicated a line that they were already carrying, because they want to work with some additional shoes or something else to see what they can do with them. They are intrigued to see what they can do with something else. Generally it is a supplemental line. In the case of their children's shoes, Child Life is a principal line of orthopedic shoes. They do not carry the orthopedic type of shoe in the Buster Brown line. They carry Child Life to cover that area. They feel that they can do a better job with Child Life. No one from Brown Shoe Company has ever attempted to coerce or threaten him to carry the orthopedic type of shoe in the Buster Brown line, in preference to the Child Life Shoe. Brown would have to agree with him on the basis of their records that it was the best for them. Child Life that is.

The consumer determines what lines they carry. But in their store, the sales people and he are the only ones that can really determine that. They are closest to the people that are buying those shoes. He actually makes that determination. He thinks of their people as doing it at the store. They are a team. No one person knows what the people are going to buy. It is a team effort with the people that work for them. It's true that he as general manager has the ultimate decision, but he doesn't look at it in that way.

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[fol. 643] The only obligation the witness feels that he had to Brown Shoe Company in regard to being a Brown Franchise Dealer was to pay for the shoes that they buy. They

have no obligation as to any particular kind or line of shoes to carry. If a line of Brown brand shoes ceased to perform satisfactorily they would drop the line. As a Brown Franchise Dealer he feels no limitation whatsoever on his freedom of action to take such a step.

They have never carried Clinics or Lazy Bones lines of shoes made by Juvenile Shoe Corporation. They have talked to salesmen about Clinic shoes, but have never endeavored to buy shoes from a Juvenile salesman. He believes it has just been a courtesy call or a stop to see their store. They have never felt they needed Clinics or Lazy Bones shoes. They feel that they have shoes that do that job real well. If they felt Clinic shoes could do as good or a better job, they would be out shopping for them and he is sure that they would have them. No one from Brown Shoe Company ever told him that they could not or should not buy any Juvenile lines of shoes. It has never been discussed.

He mentioned that they carried Deb shoes, in the other brands of shoes. They carried Deb shoes six or seven years. During that period of time the store was on the Brown Franchise Program. No one from Brown ever attempted [fol. 644] to prevent him from carrying the Deb line of shoes. He has never been subjected to threats or coercion by Brown Shoe Company to discontinue carrying the Deb lines of shoes.

They have carried Freeman shoes manufactured by the Freeman Shoe Company in Beloit, Wisconsin, from time to time. Currently, they merely special-order an item if a customer wants something that Freeman may have. They have carried four to six patterns of Freeman's men's shoes. They ceased that practice because they feel that the Roblee line does a better job in their store. The witness said, we feel we can buy Roblee shoes at a dollar a pair less than what we pay for the same thing in the Freeman line. Being on the Brown Franchise Program had nothing to do with dropping the Freeman line. No one from Brown Shoe Company told him that he had to drop the Freeman line. No one from Brown Shoe Company engaged in any threatening or coercive type of action to require him to drop the Freeman line. He said, it was our own decision. We felt that the shoes we had from Brown and other resources were doing the job. We didn't need them.

They have never carried any Weyenberg shoes. A salesman from Weyenberg Shoe Company has called on them off and on for a number of years. They have never bought any shoes from Weyenberg. They never felt the shoes would fit into their program. Being on the Brown Franchise Program had nothing to do with the decision not to buy Weyenberg shoes. Nobody from Brown Shoe Company told him that as a Brown Franchise Dealer he could not buy Weyenberg shoes. No threats were made or coercive action engaged in by any persons from Brown Shoe Company to compel him not to buy Weyenberg shoes.

They have never carried any shoes manufactured by the Huth-James Shoe Company. No salesman from that company has ever called on them to try to sell Huth-James shoes. They have never carried any shoes from the Leverenz Shoe Company. No salesman has ever called on them to sell shoes from the Leverenz Shoe Company.

[fol. 645] Cross-examination.

In children's shoes the witness' principal line is Buster Brown and in orthopedic footwear the principal line is Child Life. Buster Brown also has orthopedic shoes but they elected to use Child Life.

VICTOR V. VANDENBURGH, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives at Lake Oswego, a suburb of Portland. He is in the shoe business and operates two shoe stores. The first store is located at 6316 Southwest Capitol Highway, that is called the Hillsdale Shopping Area. It is within the incorporated city limits of Portland. The other store is located at 425 Second Street, Lake Oswego. It is a suburban community, a suburb of Portland. Both of these shoe stores go under the name Vandenburg Shoe Store. The first store in Portland opened July, 1954, just 9 years ago. The store at Lake Oswego has been in operation 4 years. The store in Portland, referred to as Hillsdale Shopping Area, was

opened as a shoe store. That store is now on the Brown Franchise Program, but was not when he opened. It went on the program about 1956 or 1957, about 2 years after he opened. The second store was started 4 years ago, in 1957. He automatically put that one right on the Brown Franchise Program when they opened it.

The brands of shoes carried in both stores are practically the same. From Brown Shoe Company they carry Buster Brown in children's shoes, Pedwins in men's shoes, Life Strides in ladies' shoes and Glamour Deb in teenage shoes. They carry about two numbers in Roblee shoes that are not important to them. In other makes they carry Weyenberg shoes, Hollywood Skooters from Vogue Shoe Company, some Freeman shoes and Buskens. They have Red Ball overshoes from Mishiwaka Rubber Company, some Kickerinos from Hampton Shoe Company in Chicago. They also have Red Wing shoes and Blue Star. From the stand-[fol. 646] point of pairage of leather shoes sold, between 65 and 75 percent of their business is represented by Brown brand lines of shoes.

In regard to their store in the Hillsdale area, the witness made no changes whatsoever in the various lines of shoes they were carrying when they went on the Brown Franchise Program. He determines the lines of shoes they carry by the shoes they think they can sell and make a profit on. Being a Brown Franchise dealer absolutely does not in any way limit his freedom of choice in that respect.

They carry Weyenberg men's shoes, by Weyenberg Olympics and the Weyenberg Massagics. They have two grades. They have carried those ever since they opened. They didn't carry the same brands of Weyenberg in the Oswego store until just this past season. They just put those in about 2 months ago. Prior to that time they carried Pedwin and Roblee lines of men's shoes in the Oswego store. They dropped the Roblee line.

No one from Brown Shoe Company has ever told him that they could not carry the Weyenberg shoe line because they are a Brown franchise store. No one from Brown has ever asked him to stop carrying the Weyenberg shoes because he is a Brown franchise store. In their Hillsdale store Weyenberg shoes represent about 75 percent of their men's shoe business. In the Oswego store they didn't have them before

so he can't say what percentage of the men's shoe business that represents. His only relationship to the Weyenberg Shoe Company is through the local people here in Portland. The local salesman calls on them.

Q. Have you ever signed a written agreement in the Brown Franchise Program?

A. Yes, when we first went on the Brown Franchise Program.

Q. Did you ever sign a franchise agreement in connection with the Oswego store?

A. I don't think so.

Q. The one that you referred to was in connection with your Hillsdale store?

A. That's right.

Q. Do you ever have the occasion to refer to that agreement?

A. I have never looked at it since we signed it.

[fol. 647] Q. Has anyone from Brown Shoe Company from the Franchise Division ever called your attention to that agreement and its terms?

A. No, sir.

Q. Are you in any way guided by the terms of that agreement, in the operation of your business?

A. No. I honestly couldn't even tell you what it was or what is says, I don't remember just exactly.

They do not carry a full line of Freeman shoes, just "spot shoes" here and there. They have been carrying the Freeman shoes in this fashion probably about 3 or 4 years. They had not carried any Freeman shoes prior to that. In other words, this was an addition to their line of merchandise. No one from Brown told him that they could not carry Freeman shoes. No one from Brown Shoe Company attempted to threaten or coerce him to discontinue carrying Freeman shoes. They are still carrying Freeman shoes. There is no reason why they couldn't carry a full line of Freeman shoes in their stores. If he thought the shoes would sell and they needed them, he would put them in, but they cover that pretty much with Weyenberg shoes. However, there are some shoes that they don't have and they buy those from Freeman Shoe Company.

The Weyenberg line and Pedwin are two different categories. Pedwins are a lower priced line and a more youthful line of shoe that they sell to high school students and so forth. We carry just two sport shoes in the Roblee line. That type of shoe does not conflict with the type of shoes they carry in Freeman or Weyenberg lines. They follow a line concentration program in their merchandising just as much as they possibly can. You can operate a shoe business better if you concentrate on certain lines. If you have fewer lines you have fewer markdowns and you have a chance to make a better profit.

Q. What is your understanding as to when you could leave the Brown Franchise Program if you chose to do so?

A. If I wanted to leave it, I would just forget it and go along on my own.

* * * * *

[fol. 648] They have never carried Juvenile shoes in their store. A salesman from the Juvenile Shoe Corporation has [fol. 649] never called on them for the purpose of selling Juvenile shoes. The witness knows the brand lines Clinic and Lazy Bones of Juvenile Shoe Corporation. When he was formerly with Meier & Frank he bought them at that time, but not for his own stores. Meier & Frank is the largest department store in Portland or in the Northwest. He was a buyer there for about 16 years. He bought women's and children's shoes. That is how he is acquainted with Juvenile shoes. They have not tried to acquire Juvenile shoes for their Hillsdale or Oswego store. They don't feel they need them. They feel that they are covered very thoroughly with Buster Browns in Children's shoes. In the other Juvenile shoes, which are nurses' types, they don't have that type of trade so they have no need for those shoes. Their decision in not carrying Juvenile shoes had absolutely nothing to do with being on the Brown Franchise Program.

They have never carried shoes manufactured by the Deb Shoe Company. He is acquainted with the Deb line of shoes only through their magazine advertising and so forth. No salesman has ever called on him as an independent shoe retailer to sell him Deb shoes. When he was a buyer at Meier & Frank he never bought Debs.

As to what determines why a shoe retailer would carry one or another line of shoes, the witness said, I will cite an example. When we opened our store, I wouldn't have opened our store unless I could get nationally advertised or nationally branded lines of shoes which I thought were the best for the money that you could buy. That is one reason I picked Buster Browns and Life Strides, the shoes that we have.

They have never purchased any shoes manufactured by the Huth-James Shoe Company. He thinks once a salesman from Huth-James Shoe Company called on them to sell them shoes. They did not buy any because they didn't feel they needed them. They were on the Brown Franchise Program at that time. This definitely did not have anything to do with their decision in not buying the Huth-James shoes. They have never carried or bought any shoes from the Leverenz Shoe Company. No salesman from that company [fol. 650] has ever called on them for the purpose of selling that type of shoe. In fact, he never heard of the line.

When they first opened the shoe store in Hillsdale, Wilson High School was just opening up at that time and they were catering to the high school trade and to children, and they gradually added on. When they first opened up, they carried Buster Brown shoes or they possibly wouldn't have opened because he wanted a good brand of children's shoes. They carried Hollywood Skooters which are teenage shoes and a few Trim Foot shoes. They also carried Pedwin men's shoes and a few Weyenberg shoes. They just carried women's casuals at that time. Later they went into heels and dress shoes for women. After 1½ or 2 years they had calls for women's dress shoes so he put them in. At that time they put in Life Stride, but did not carry any other types of women's dress shoes.

They discontinued the Trim Foot line about four years ago for a personal reason. They had a salesman who was a very personal friend of the witness and as long as he was on the road the witness would buy a few shoes from him. He finally retired and the witness quit buying the shoes because he didn't think they needed them. They were on the Brown Franchise Program at that time. The fact they were on the program had nothing to do with the discontinuance of the

Trim Foot line. They dropped those and put in Blue Stars, which are similar to Trim Foot. They are children's dress shoes. They continue to carry a few Blue Stars. Their principal line of children's shoes is Buster Brown. Their principal line of women's dress shoes is Life Stride. There are a few casuals in the Life Strides and they have a few casuals in the Deb shoes. During his experience with Meier & Frank he carried Life Stride shoes. In fact, he thinks that was the only line of Brown shoes that they had in the department at that time. He thought it was the finest line of shoes that they could buy for the price, high style and the best line. And when they put dress shoes in their own store, he naturally bought Life Strides.

[fol. 651] The witness was asked whether there was any requirement made as to how many Brown brand lines of shoes they were obliged to carry when they went on the Brown Franchise Program. He said, I can't honestly answer that, because I can't tell you what was in that contract. I don't think so. He does not feel that he was under any obligation to carry any particular amount or line. If a line of Brown shoes were not performing properly, he would absolutely not have any hesitancy in dropping that line. He said, in fact, we did that this season on a certain Brown that we didn't think was up to par. We dropped it completely in the Oswego store and down about 80 percent in the Hillsdale store. That was the Glamour Deb line. He is substituting with the Hollywood Scooters. They are putting in Air Steps this fall because they feel they need a more conservative type of shoe than the Life Strides.

They borrowed money from Brown Shoe Company, when they opened their Oswego store. When they opened the first store, they had the money and paid cash for everything, but when they opened their Oswego store, they borrowed money. That loan was paid off in three years, the term of the loan. Interest was at 5 percent. There was nothing said in connection with that loan as to the purchase of Brown lines of shoes or the non-purchase of outside lines of shoes. They used the proceeds of the loan to open their store. They put the same amount in that he borrowed from Brown to open the store. Some of the proceeds were used to buy shoes or other merchandise. That was not spent entirely on Brown brand lines of shoes. There were some other lines. The

manner of spending the proceeds of the loan was just the way he wanted to spend it.

Their stores use the record system of the Brown Franchise Program, but not all of it. They don't use the buying plan. They use their own plan. He doesn't think you could operate a shoe store without a buying plan. You have to have something to base your buy on, and he thinks it would be very poor business not to use some sort of buying plan. They do not carry the group life insurance nor the business or fire or casualty insurance available under the Brown [fol. 652] program. They have never had occasion to use the architectural service. They do not subscribe to the window trim service available under the Brown program.

They have an outdoor sign at the Oswego store and the Hillsdale store. At the Oswego store it is an illuminated sign. It says Vandenburg Shoes, and underneath that sign is a Buster Brown sign. The Vandenburg Shoes sign is a leased sign, and the Buster Brown sign is separate. That sign is about three feet by four feet. He paid a dollar for it. He doesn't think they received that sign because they were on the Brown Franchise Program. They were asked if they wanted the sign, or they could have the sign if they wanted it, and naturally they took it. At the Hillsdale store they have a large sign which they lease which says Vandenburg Shoes and they have the Buster Brown sign on the side of it. The same type of sign, on the same basis. They received the signs through the Buster Brown salesman.

Their stores carry U.S. Rubber Company and Ball brand canvas or rubber footwear supplies. Ball brand is from Mishawaka Rubber Company. U. S. Rubber products are very competitive to the Ball brand rubber products. They are exactly the same as to prices and terms. In purchasing U. S. Rubber goods, they make the purchases through a U. S. Rubber salesman. They get the invoice from the U. S. Rubber Company and then they get it through Brown. They pay it to the Brown Shoe Company. The terms or discounts are just exactly the same. They used to buy straight through U. S. Rubber Company and got the same terms and the same discounts.

Meier & Frank, where the witness formerly worked as a buyer, is a large department store. As to whether that type of shoe merchandising in that type of department store

operates on a line concentration program somewhat similar to what he has described in his own store, he said, it is similar, yes. I don't think they concentrate quite as thoroughly as we do because they naturally have a much larger volume and they have to buy more outside lines. When I was there we concentrated on certain brands of major lines.

[fol. 653] He thinks that is a type of shoe merchandising that applies to a store like Meier & Frank but perhaps different in degree. He followed that when he was at Meier & Frank. They tried to concentrate on certain lines. And the purpose or reason for doing that when he was with Meier & Frank was substantially the same as in his own store operation.

Cross-examination.

The witness would say they have 15 to 20 percent of the total inventory of the Hillsdale store in men's shoes. Their principal brand of men's shoes is Weyenberg. They have increased the purchases of Weyenberg shoes every year since they started buying shoes from them.

Redirect examination.

Pedwin shoes are a type of shoe that is purchased among high school students. They are a youthful line of shoes. Their stores do a large business with high school students, principally in the Pedwin line.

(Witness excused.)

Hearing Examiner Creel: All right, we will take a recess. But before we take a recess, I want to discuss this matter of further hearings.

I indicated in Washington that I was going to reach the point pretty soon when I was going to discontinue this dealer testimony and I indicated that it would be at the end of this hearing. I think we have heard all of the dealer testimony that we should hear unless there is something different from the kind of testimony we have been listening to.

Mr. Burke: Is that a ruling that you are proposing to make?

Hearing Examiner Creel: Yes. I can make it a ruling right now if that will simplify matters.

In other words, I am not going to permit you to call any further dealer witnesses to testify in the same manner as the past dealers have testified.

Mr. Burke: We believe that if other independent shoe merchants on the Brown Franchise Program were called to testify, they would testify substantially the same as those [fol. 654] who have already testified on this same subject matter.

We do not wish to burden the Commission or the record with cumulative testimony. However, we certainly don't want to be foreclosed in providing whatever evidence that is material, competent and relevant to this inquiry. And we believe that dealer testimony is a competent, relevant and very material testimony on behalf of the Respondent in order to adequately protect its interest in view of the charges made in the complaint plus the type of testimony that was given during the case that was put on by the attorney for the Complainant.

We have attempted, in the course of this dealer testimony, to rebut directly a number of allegations or contentions that were made by the manufacturer witnesses.

And we also want to show, through the mouths of the dealers, how the Brown Franchise Program operates and what it consists of.

This Brown Franchise Program is a national program. It is coast to coast and border to border. We have engaged in hearings in Dallas and now on the West Coast to show the wide spread nature of the Brown Franchise Program and how it is practiced in various parts of the country. We certainly do not wish to be foreclosed from demonstrating further how the franchise program operates in various other parts of the country, showing that there are no differences in spite of the other definite views to the contrary that were expressed by some of the witnesses for the Complainant.

We feel that if we were prevented from bringing that type of testimony into the record by a ruling that would foreclose us from doing so, we would be materially prejudiced if a great deal of weight and credit would be given to the testimony of the manufacturer witnesses who attributed to the Brown Franchise Program certain facts that I don't believe are valid.

We recognize that at the time there was a good deal of hearsay, some of it three times removed—

[fol. 655] Hearing Examiner Creel: (Interposing) I don't think you need to argue your complete case.

Mr. Burke: I think that it is essential that we have the opportunity to demonstrate to the fullest extent possible that the Brown Franchise Program operates the way these witnesses have testified.

Would the counsel for the Complainant be willing to agree that if these witnesses were continued to be called from various sections of the country, that they would testify substantially the same as the witnesses who have testified up to now, if asked substantially the same type of questions on the same subjects?

Hearing Examiner Creel: That is up to him.

Mr. Timony: I can't so stipulate.

Hearing Examiner Creel: I am not going to insist on any kind of an agreement.

And, I may be in error in cutting you off at this point but I am convinced that I should do so and I am going to do it.

Do you have any other type of testimony that you want to offer?

Mr. Burke: May I ask, as a matter of formality on the record, if that is your ruling, sir?

Hearing Examiner Creel: Yes, it is.

Mr. Burke: Would I be presumptuous to ask you for the basis for your ruling?

Hearing Examiner Creel: I don't know whether you would be presumptuous or not but it seems to me that I have heard all of that kind of testimony that I need to hear. In fact, a lot of the testimony that we have heard has been cumulative. I certainly don't want to listen to any more of the same kind of testimony.

If you have any other kind of evidence to offer, I will be glad to hear it.

Mr. Burke: Well, in order to preserve the record on behalf of the Respondent, I will necessarily have to take exception to the ruling.

[fol. 656]

July 21, 1961

ERNEST W. LOSBERGER, called as a witness for the Respondent, testified as follows:

Direct examination.

He is in the retail shoe business and has been since April of 1948. He owns two stores: Laurel Shoes at 655 Laurel Street, San Carlos, California, and Laurel Shoes at 106 Hillsdale Mall, San Mateo, California. These are primarily juvenile shoe stores and they have expanded into a family type shoe store with the exception of women's heels. "Primarily juvenile" means mostly youngsters from about 6 months to 16 years of age. They opened the San Carlos shoe store in April, 1948, as a new store. They opened the San Mateo store as a new store in December, 1955. That is the Hillsdale unit. They had a shoe store in San Mateo prior to the present location, which had been acquired in 1951 as an existing outlet. Both of those stores were on the Brown franchise program. The San Carlos store went on the program in April, 1948. The San Mateo store went on the franchise program when it was purchased in 1951.

The lines carried in these shoe stores while they were on the Brown Franchise Program were: Buster Brown, Pedwins, Roblees, and some of the Barbara Brown, the teenage growing girls lines. They weren't named Glamour Debs at that time. No non-Brown brand shoes were carried at that time. They carried canvas and rubber footwear from the United States Rubber Company. They also carried a lot of house slippers from companies like Daniel Green Slipper Company and Welco Shoe Corporation in Waynesville, North Carolina. At one time they carried the Air Step line of women's dress shoes for approximately 2 years, probably from 1951 to 1953. They eliminated it from their stock because it proved to be unprofitable.

They continued on with the childrens' line of shoes, the Buster Brown line, and also took on another childrens' line in addition to Buster Brown, in both stores. In 1951 and 1952, they were having some problems with deliveries, so to [fol. 657] supplement their Buster line they put in a competing line of shoes to be assured of deliveries and merchan-

dise when they needed it. That was the Jumping-Jack line. It is a competing line of shoes, manufactured by Vaisey-Bristol Shoe Company. After putting in Jumping-Jacks they probably did 10 and 15 percent of their business in the Vaisey-Bristol line and approximately 25 percent in the Buster Brown line. The children's business was approximately 40 percent of the overall business in the stores. This is reasonably close figured either by pairs or by dollar sales.

They continued with the Buster Brown line until late 1953. After that they transferred to the Green Shoe Company. That is the Stride Rite line. At that time they dropped the Buster Brown and the Jumping-Jack lines of shoes. So Stride-Rite became their sole line of children's shoes. The witness would estimate the same percentage of their business was in the Stride-Rite shoes after they took them on, or around 40 percent. They entirely replaced the existing children's lines of shoes.

As to why he went to Stride-Rite, the witness said, they became available for delivery when one of our competitors was purchased by General Shoe Corporation and with the record that they had for deliveries plus the fact that they were well known in the area, we decided that this was a good idea at the time. The General Shoe Corporation purchased the chain of Sommer and Kaufmann Stores, and Stride-Rites were eliminated from these stores in favor of the Acrobat line made by General. That made Stride-Rites available in the area so the witness picked them up.

Q. At the time you ceased carrying Buster Brown shoes and picked up Stride-Rite shoes was there any attempt made by any member of the Brown franchise division to threaten or coerce you in any manner?

A. No, there were no threats made.

Q. Was there any attempt made to use the Brown Franchise Program as a means of retaining your patronage as a purchaser of Buster Brown shoes?

A. No.

[fol. 658] Q. Did you have any contact with any member of the Brown franchise division about the time you changed from Buster Brown shoes to Stride-Rite shoes?

A. Yes. I had a phone call from St. Louis from Mr. Johnston.

Q. Will you describe what he said, to the best of your recollection?

A. He called us and told us that in the future he was sure deliveries would improve and that we could get better service and could depend on deliveries when we needed them.

Q. That had been one of your problems with the Buster Brown line before?

A. That was our major problem. We didn't have the merchandise during our peak selling seasons.

Q. Did this result in your retaining the Buster Brown line?

A. No, we still proceeded with our Stride-Rite line.

Q. To the best of your recollection, did Mr. Johnston, at the time of your conversation with him, call your attention to the fact that this might result in your being taken off the Brown Franchise Program?

A. No, he didn't mention that.

Q. Did he refer to the franchise program in any way?

A. Not that I recollect, no.

Q. Did anyone subsequent to that time advise you that you had been removed from the Brown Franchise Program?

A. No.

Q. Are you still on the Brown Franchise Program?

A. No.

Q. How did it happen that you withdrew or terminated your relationship with the Brown Franchise Program?

A. We automatically assumed, when we eliminated our Busters, that we were automatically out of the Brown Franchise Program. So we just terminated the program ourselves at that time.

Prior to the time that they eliminated the Buster line in its entirety, the witness estimated that between 55 and 65 percent of their business was done on Brown brand shoes. It would be approximately the same in pairs or dollars. After they eliminated Buster Brown shoes approximately 25 percent of their business was in Brown Shoe Company lines. That is what the Buster and Jumping-Jacks combined represented at the time that they terminated them. They lost some of the percentage of Busters by adding the Vaisey-Bristol line. The percent of business they were doing with

Brown Shoe Company on Brown lines after they ceased buying Buster Brown shoes was around 25 percent.

Q. Did you have a written franchise contract with the Brown Shoe Company?

A. I can't remember whether there was a written agreement or a certificate of some type at the time that we opened or not. It seems to me there was some agreement but it wasn't a signed agreement. It was just a certificate to the fact that we were on their Brown Franchise Plan.

Q. Was any reference made to this certificate or any document in connection with the Brown Franchise Program at the time you ceased carrying Buster Brown shoes?

A. No.

Q. Did the fact that you were in the Brown Franchise Program give you any hesitation in your decision to buy Stride-Rites and cease buying Buster Brown shoes?

A. No.

United States Rubber representatives called upon the witness to sell canvas and other footwear from the United States Rubber Company while they were a franchise dealer. Those purchases were billed to Brown Shoe Company and Brown in return billed them. They continued to carry U. S. Rubber footwear after they withdrew or terminated with the Brown Franchise Program. The price of that canvas and rubber footwear did not change after they left the Brown Franchise Program. The terms of credit and discounts were the same while they were on the Brown Franchise Program and after they left. There was no change whatsoever in the price, or credit terms or special discounts or anything similar to that as a franchise dealer or after they terminated from the franchise program.

Hearing Examiner Creel: I don't understand, sir, how it was that you came off the Brown Franchise Program. Was it your decision to do it or Brown's decision or what was it? [fol. 660] The Witness: It was our decision. We arrived at this decision because we had a problem getting deliveries when we wanted this merchandise.

Hearing Examiner Creel: I understood that and I know you gave up the Buster Brown line. But it was after that, that you went off the Brown Franchise Program?

The Witness: At the same time.

Hearing Examiner Creel: Had you decided to go off or did you understand that you would be taken off when you gave up the Buster Brown line?

The Witness: We just assumed when we dropped the line in which we did the majority of our business that we were automatically off the Brown Franchise Program. That was at the time we dropped the Buster Brown line.

Hearing Examiner Creel: Well, did you resign from the program or indicate your desire to get off the program or did they tell you that you were off the program? That is what I am trying to determine.

The Witness: No, we just automatically dropped it ourselves. There was no written letter or resignation or anything. We eliminated the monthly reports from the Brown Franchise Division and we eliminated the inventory controls and everything else that usually goes with this Division.

Hearing Examiner Creel: And what lines did you continue to carry after you dropped the Buster Brown line?

The Witness: We continued to carry the Roblee lines, the Edwin lines and their teenage flat line for a short period of time.

Hearing Examiner Creel: But there is no definite date on which you could say you went off the Brown Franchise Program?

The Witness: No, sir.

[fol. 661] By Mr. Taylor:

Q. After you went off the Brown Franchise Program, was there any difference in the availability of the Brown brand lines that you continued to carry?

A. No. In fact, I think the service improved a little bit.

Q. Could you buy those Brown brand lines that you continued with at the same price and on the same credit terms as before?

A. Yes.

They had the group life insurance through the Brown Franchise Program at the store. At the time they put in the Green line of shoes, they terminated the insurance and put their insurance through their local broker. They had carried

fire and extended coverage and ability insurance through the Brown Franchise Program. They eliminated that and placed it with their local broker. They had a package deal for the entire insurance program with a local broker. The witness has made no cost comparison of the cost of that insurance to him through the Brown Franchise Program and what it was later when he obtained it locally. He had no idea what the difference would be or whether there is a difference.

They were using the record system available to Brown franchise dealers when they were on the program. Since they left the program they have maintained the same system and added additional records. They have had records which are the same or similar to the record forms they used on the Brown Franchise Program printed up locally. They had about 200 forms for inventory and month-end report sheets printed and the cost was somewhere around \$55.00 or \$60.00. Those forms would last them in a normal operation probably between 4 and 5 years for both stores. No one from Brown Shoe Company has ever asked him to refrain from using the forms that they used on the Brown Franchise Program which they are now having printed locally.

Q. While you were a member of the Brown Franchise Program, did anyone from the Brown Shoe Company ever tell you that you had to carry a certain line or lines of Brown brand shoes?

A. No.

[fol. 662] Q. While you were a member of the Brown Franchise Program, did anyone from Brown Shoe Company ever tell you should get rid of a conflicting or outside line of shoes?

A. Well, at the time that we added the Vaisey-Bristol line the salesman made a remark to that effect.

Q. Did he tie it in with the Brown Franchise Program?

A. No, he didn't tie it in with the system at all.

Q. How would you describe his efforts on behalf of Buster Brown at that time?

A. I would say it was a salesman trying to protect an account.

Hearing Examiner Creel: Will you tell us what he said, as nearly as you know?

The Witness: I can't remember the exact conversation but he did say that we should eliminate the conflicting line.

By Mr. Taylor:

Q. Did he say why you should?

A. Well, it was priced in the same area and he couldn't see the reason for two lines in the same price area.

Q. Did he place this on the basis of distribution of Buster Brown or proper merchandising of Buster Brown?

A. Yes.

Q. Did he refer in any way to the fact that you were on the Brown Franchise Program and that this was a conflicting line?

A. No.

Q. He never mentioned it?

A. No, not to my knowledge.

Q. Mr. Losberger, what have your gross sales been since you went off the Brown Franchise Program? I am not asking for detailed figures, I am asking whether they have gone up or down.

A. They have gone up substantially over the years.

Q. Will you repeat that?

A. They have gone up substantially over the years, since then.

Q. How about your net worth, has it increased or decreased?

A. It has increased proportionately.

Q. Do you know of any manner in which you were injured by leaving the Brown Franchise Program?

A. No.

[fol. 663] Q. Have you been handicapped in any manner in the operation of your business since you left the Brown Franchise Program?

A. No, we haven't.

Q. Did you have any obligation to Brown Shoe Company as a Brown Franchise dealer?

A. No, not that I can recall.

Hearing Examiner Creel: I don't understand, then, why you assumed that you would go off the Brown Franchise Program when you gave up Buster Browns. Why did you?

The Witness: Well, we had a choice. We could have

stayed on the program by buying Busters but this conflicted with the merchandising scale. In other words, the two lines were priced closely enough together that it was a double inventory.

Hearing Examiner Creel: I can see why you didn't want to do it for business reasons. But, what I was asking you was why you just assumed that you gave it up, unless you felt that you were under some obligation to continue as a member of the program. Do you see what I mean?

The Witness: Yes, I see what you mean.

Actually, there probably could be an obligation there if you carried the entire line including the Busters. But when we dropped those, we automatically assumed that we would be eliminated or would be dropped off the program itself.

Hearing Examiner Creel: All right.

By Mr. Taylor:

Q. While you were on the program, did you feel that you were obligated to carry Brown's lines in any extent?

A. No, and when we decided to drop the Busters, we just dropped them period.

Q. And the fact that you were on the program, did that make you hesitate in your decision to drop Busters?

A. No.

Q. You understood that you had to be a customer of Brown to be on the Brown Franchise Program?

A. Yes, that was the understanding.

[fol. 664] They have been called on by a salesman or have had contact with representatives from the Juvenile Shoe Corporation off and on. They have not purchased Clinics. They did purchase Lazy Bones in 1957 or 1958, in that area, after they were off the Brown Franchise Program. They do not carry Lazy Bones shoes today. As to why not, the witness said, we thought we needed a lower priced line in this particular type of shoe and we went into a \$5.95 to \$6.50 price line against the \$8.50 and \$8.98 Stride-Rites and we didn't need them so we eliminated them. Nothing connected with the Brown Franchise Program prevented them from buying Lazy Bones shoes if they so desired.

He didn't even recall whether they had ever been called on

by a member of the Deb Shoe Company. They have never carried the Deb line of shoes. They have never been called on by a salesman from the Freeman Shoe Company and have never carried the Freeman line. They have never been called on by a salesman from the Weyenberg Shoe Company and have never carried the Weyenberg line. They do carry men's shoes though: the Roblee line and the Pedwin line. They have never been called on by a salesman from the Huth-James Shoe Company. He is not familiar with that organization. They have never been called on by a salesman from the Leverenz Shoe Company. He is not acquainted with them either.

In his opinion the Stride-Rite line of shoes is a nationally recognized brand of shoes. As to how he would describe the line in terms of prestige or customer acceptance, the witness said, it's excellent. It is a line of very high prestige and well distributed in the country and recognized as a very good line of shoes. They rank very near the top in the industry in children's shoes.

Cross-examination.

The Buster Brown line in children's shoes is a highly recognized line of shoes also. It is quite close to the top. At the present time their principal children's shoe is Stride-Rite. Their principal lines of men's shoes are Roblee and Pedwin. As to their principal line of women's shoes they eliminated the women's heels when they eliminated Air-Step, [fol. 665] but do have flats and casuals which are actually a combination of teenage and women's shoes. They buy some Glamour Debs from Brown Shoe Company and they have a line called Patio that they buy from Glaser Shoe Company in San Francisco. Their principal line of women's shoes at this time is Glaser.

At the present time they are no longer on the Brown Franchise Program in either of their stores. They dropped both stores from the program at the same time. They did not use the window trim service provided through the Brown Franchise Program while they were on the program. They received a few background pictures, plaques or what have you, but there was no display service to his knowledge. The window trim service apparently did not exist when they

were on the program, or if it did, they didn't use it. They used the architectural service provided through the Brown Franchise Program twice. There was one outside sign that they had on their Twenty-Fifth Avenue store in San Mateo that was from Brown Shoe Company. The witness paid for that. They made one loan from Brown when they purchased the San Mateo operation, in 1951.

The witness found the service of the Brown field man definitely beneficial. He would not say that was the main reason they were on the Brown Franchise Program. As to the main reason, he said, I think the bookkeeping setup which was of substantial help in maintaining records and something that we were not too familiar with as to how to set up the bookkeeping system. I think this was the main reason why we went on the program. It helped us to become established and it helped us keep a better control of our inventory. Their forms and everything are set up so that they are quite easy to read and easy to maintain.

They went off the Brown Franchise Program in 1952. Since that time they have maintained approximately a 10 percent to 15 percent increase yearly, with the exception of last year.

San Carlos has approximately 24,000 people at this time. San Mateo is closer to 55,000 people.

[fol. 666] Redirect examination.

The first time they received architectural help from Brown was in 1951, when they moved their original store to the building next door. The second time was about 1953, or the early part of 1954, probably when their Hillsdale operation was set up.

The date they went off the Brown Franchise Program, as nearly as he can place it, was late 1952 or early in 1953. He can't recall the exact time but it was in that area. Counsel for respondent pointed out to the witness that he had earlier testified that they went off the program late in 1953 and now said late in 1952, and asked him to think it over and see which was the correct period of time. The witness said, in 1953. They moved to the Hillsdale Shopping Center in December, 1955, from 25th Avenue. They were

making plans and negotiating for the lease and so forth to go into that center in 1953. At that time there was some talk of putting in a Weatherby-Kaiser store. This was also instrumental in the idea to drop the Buster Brown shoes and go into the Stride-Rite line of shoes. That was in early 1953.

He believes that they left the Brown franchise program a little after that. It was 1953 because they had decided to drop this line when they heard through the Shopping Center that Brown was about to put a Weatherby-Kaiser store right across the street from them, with the same lines that they carried. They knew that the Weatherby-Kaiser store was intended to be placed there through the Superintendent of the Hillsdale Shopping Center. They saw the blueprints when they were discussing the terms of their lease and Weatherby-Kaiser's name was on one of the buildings that was located near theirs. The year he saw those blueprints as near as he can remember was early 1953. They were still on the Brown franchise program at that time.

Right now there are 15 shoe outlets in the Hillsdale Shopping Center, and upon completion of the Center, there will be 19. The architectural services they received on the second occasion in 1954, were completed after they were off the Brown franchise program. It was started when they were on the program and completed after they left.

[fol. 667] Recross-examination.

The 15 shoe outlets in the Hillsdale Shopping area do not include the witness' store in the Hillsdale Shopping Center. They do not have 3 stores. They purchased the store on 25th Avenue in San Mateo in 1950 and a huge shopping center went in about 4 blocks from this location. They had the opportunity to move to this Center and did so. That was in December of 1955.

Only one of the 15 shoe outlets in Hillsdale at the present time is a true family shoe store in itself and that is Gallenkamp. The witness' store is not a family shoe store because they don't carry the women's heels. Gallenkamp's is a retail chain store. There are 2 independent shoe outlets in the Center he believes. Their own store and the other

one is Taylor's Red Cross Shoes. They have been in there about 6 months. The rest are leased departments or chain operations.

The witness went off the Brown Franchise Program both because he thought Brown was going to put a Weatherby-Kaiser store across the street from them and because they wanted the Stride-Rite line. They didn't feel it was good business to have a Weatherby-Kaiser store carrying the exact shoes right across the mall from them, which is 50 or 60 feet, plus the fact that the Green line which is nationally recognized and an excellent line became available at that time.

Redirect examination.

The witness doesn't believe that the Macy Department Store is independent. He thinks Macy's run their own department.

(Witness excused.)

COLLOQUY

Hearing Examiner Creel: Of course, gentlemen, you understand that the remarks and ruling that I made yesterday are to be taken as following the testimony you have just heard. In other words, we anticipated that this witness was going to be here this morning.

Do you have anything further or have we discussed everything that we need to discuss except the setting of the next and last hearing?

[fols. 668-676] Mr. Burke: May I inquire in apropos of your last remarks, to what extent would testimony such as was given by the witness that we had this morning be barred by that type of ruling?

Hearing Examiner Creel: I think it would be absolutely barred by the ruling that I made yesterday.

Mr. Burke: His entire testimony?

Hearing Examiner Creel: Testimony of this type, yes.

Mr. Timony: I don't think Mr. Burke understands you, sir. Didn't you just say that this testimony was excluded from your ruling of yesterday?

Hearing Examiner Creel: That's right.

Mr. Burke: I understand that but for clarification as to the application of your ruling—

Hearing Examiner Creel: I don't think you are clarifying anything. I think you are making it more confusing. What I said yesterday was that I thought I had heard enough dealer testimony and I still think so and that would include testimony as this witness gave.

Mr. Burke: From the start to the finish?

Hearing Examiner Creel: That's right.

Mr. Burke: Well, I must necessarily take exception—

Hearing Examiner Creel: (Interposing) Let's not go through all that again. I was just explaining that because of the shortness of time this morning that we had that discussion yesterday rather than today.

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Mr. Timony: May I ask, for the record, are you striking the testimony of this witness?

Hearing Examiner Creel: Oh, no, this isn't stricken at all. In so far as my ruling is concerned, he is considered to have testified before I ruled it.

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[fol. 677] Mr. Burke: Before calling our next witness, Mr. Examiner, I want to make a statement to you to indicate that I am not disregarding the previous ruling in Portland as to calling franchise dealers and witnesses. We have two witnesses this morning who are franchised dealers who, as their testimony will show, I believe, are in specific rebuttal to certain documentary evidence that the attorneys for the complainant introduced in evidence, and I am observing the ruling that you made. I do not want you to think I am disregarding the ruling because, while I except to it, I realize that the ruling has been made and that is that.

Hearing Examiner Creel: All right, sir.

October 30, 1961

CLARENCE W. NOLAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness is in the shoe retail business. He owns and operates a store located at 5155 Genesee Street, Auburn, New York. It has been on the Brown franchise program under his management since 1937. The witness knows a Mr. Bob Taylor. He is a fieldman for the Brown Shoe Company. He comes to see the witness in his capacity as fieldman at the store in Auburn.

On the first trip to their store in 1958, Mr. Taylor looked their merchandise over and one particular thing seemed to [fol. 678] bother him. They had a line of shoes called Fiancee, made by Clark Shoe Company, and he thought that they could carry a line of shoes made by the Brown Shoe Company called Life Strides, and he suggested that they give that some consideration. He did not tell the witness that they had to carry the Life Stride Shoe.

The witness makes the decisions as to what shoes they carry. That determination is made on the basis of the lines, what is attractive to them, what is good for them, what sells. What is good for them is what sells. He makes that determination. They had been carrying Fiancee shoes for some period of time prior to Mr. Taylor's visit, possibly, three or four years. They are presently carrying Fiancees, and have carried them right along for this period that goes back to approximately 1955.

Mr. Taylor in the course of his conversation with the witness did not make any attempt to threaten or coerce him to compel him to carry Life Strides instead of Fiancee as a line in their store. The witness would have remembered that if he had. They had stocked Life Stride shoes prior to Mr. Taylor's visit, but no longer carried them at the time of his visit. Life Stride was a Brown line of shoes. The witness said we dropped Life Stride because we were dissatisfied with the performance. By performance I mean the attraction to the public. We didn't think we were making money on it. It was not the proper turnover and the line was not acceptable to our trade. We discontinued it.

No one from Brown Shoe Company attempted in any way to threaten or coerce him or to compel him to continue to carry Life Strides. They did nothing in reference to the suggestion of Mr. Taylor's in 1958 in regard to carrying Life Strides. The next year they looked at the Life Stride shoes in Syracuse at a style show but made no decision.

They did not stock that shoe. They continue to carry Fiancee. Mr. Taylor was not the Life Stride salesman. He was the fieldman for the Brown Shoe Company.

[fol. 679] The witness has carried shoes manufactured by the Deb Shoe Company. He is not prepared to say the date, probably around 1950 or somewhere around in there. They do not still carry them. They carried them possibly two years or less, and stopped. No one from Brown Shoe Company told him to stop carrying them. The reason was the line didn't perform. It was not attractive to their trade. It was a business decision on his part.

The witness, as the owner of a Brown franchise store, does not in any way feel restricted in his operation by virtue of being a Brown franchise store. They make their own decisions as to what shoes they carry. They have always done that and they are doing that today.

Cross-examination.

The witness was shown Commission's Exhibit 25 A-C, a Brown franchise contract. He said he may have seen one of those before, he doesn't recall. He doesn't remember signing one.

The store at 5155 Genesee Street is the only shoe store that they run now. They have had two other shoe stores in the past besides this one. They owned them at the same time. In 1950 they opened one in Seneca Falls, New York and sold it about last year. That was on the Brown franchise program. They have had two family shoe stores and one department store operation, Hislop Department Store, in Albany, New York. They had the department store a little more than a year, approximately 5 years ago.

They are presently under the Brown Franchise Program. The store that they own at the present time is a family shoe store.

The sale of women's shoes is a part of their operation.

Possibly 30 percent of their total annual sales is in women's shoes. They have a Brown line in women's shoes and that is Air Step. That is their leading line of women's shoes. Approximately 60 percent of their total sales volume annually is in Brown lines. This would be the same in pairs [fol. 680] or dollars. The approximate annual sales volume of the witness' store would be over \$300,000.

ORVILLE B. SHUGARTS, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Clearfield, Pennsylvania. He is a retail shoe merchant. They are incorporated under the name of Heydrick Shugarts, Inc., trading as Shugarts Shoes, of which he is the President of the corporation. They have two stores. The second store is located in Philipsburg, Pennsylvania, twenty miles from Clearfield. Their original store is located in Clearfield. The corporation presently operates those two stores. The witness is acquainted with the Brown franchise program. Their Clearfield store has been on the franchise program since its origination in 1935 and their Philipsburg store has been on since September of 1956.

They carry shoes manufactured by the Juvenile Shoe Corporation in both stores. That would be the professional women's white nurses' oxfords, known by the trade name as Clinic. They first began carrying Clinic shoes in the Clearfield store at the beginning of 1956 and in the Philipsburg store in September of 1956, the date which they opened the Philipsburg store. They have never stopped carrying the Clinic line in either of those stores since that time.

They carried Lazy Bones made by Juvenile in the Philipsburg store from September, 1956, for a period of approximately six months. He wouldn't know whether those were Lazy Bones Junior or Senior. He would just know them as Lazy Bones.

Q. Would you elaborate on how you happened to carry the Lazy Bones shoes?

A. Yes, when we opened the Philipsburg store the hos-

pital located in that town required the freshmen or first-year training nurses to wear black rather than the women's while normally worn by nurses, and since we had the Clinic [fol. 681] white shoes we felt the need of a black shoe that could retail at a price level which the younger nurses felt capable of paying. They don't pay them very much during the training period.

Q. What age group would that be?

A. From the time they graduate from high school. The type of black oxford that we needed was not available in the Clinic line, but it was available in the Juvenile Lazy Bones. Of course, with our opening purchase we purchased a number of those, and that was in September. Well, the following class, which began, I believe, in July of the following year, they changed the regulation in the hospital in which they allowed the freshmen to wear white, and that, of course, left with no need for the black oxfords, so we discontinued carrying those.

They have never had occasion to buy any other patterns or types of Lazy Bones shoes from the Juvenile Corporation. No one from the Juvenile Corporation ever attempted to sell them the Lazy Bones shoes as a line in either store. The fact that they do not buy Lazy Bones shoes at this time has no connection with their participation in the Brown franchise program. The fact that they are on the Brown franchise program in no way, shape or form keeps them from purchasing Lazy Bones shoes.

At the request of counsel for respondent, the witness searched his records of purchases of Clinic shoes for both stores. He has the figures with him. At this time the witness gave the following records of purchases of Clinic shoes in both stores since the date that they started using Clinic shoes. This was by pairs. In the Philipsburg store, in 1956, keeping in mind that they only opened the store in September, so the figures would be for three months, he purchased 74 pairs of Clinic and 31 pairs of the Lazy Bones shoes. In 1957 there were 122 pairs of the Clinics purchased. In 1958, 114 pairs of Clinics. In 1959, 94 pairs. These are all Clinics. In 1960, 172 pairs. He would estimate that their purchases or shipments of Clinics for the 1961 year will surpass the 1960 figure.

[fol. 682] In Clearfield in 1956 he purchased 153 pairs. These are all Clinics. In 1957, 163 pairs. In 1958, 149 pairs. In 1959, 148 pairs. In 1960, 229 pairs.

Counsel for respondent noted that during the years 1958 and 1959 his purchases of Clinics in both stores seem to decline. The witness explained they are located in a somewhat depressed area and those two years have both been economically bad years in their area, which accounts for the decline in pairage. He is certain if they had figures on other lines of shoes they carry they would find the same thing. He is positive their purchases of Clinic shoes for the year 1961 for the Clearfield store were enough to surpass the purchases of 1960. The witness feels free as a Brown franchise dealer to purchase Clinic shoes. No one connected with Brown franchise program ever attempted to impede or hinder him in any way or keep him from purchasing Clinic shoes.

The figures that he just related for both stores were taken from the original invoices received from the Juvenile Shoe Corporation during those years. They represent shipments and not purchase orders placed.

Shoes of similar type and pattern as the Clinic shoe are available from Brown Shoe Company. The brand on a somewhat modified selection is Air Step. He believes that is the only one. They carry Air Step shoes.

The witness is acquainted with George Crocker, the field representative for the franchise division. He has been in that territory since 1955 or 1956 and calls on the witness today. He has been calling on the witness periodically during that period. The witness has carried the American Girl brand of shoes in both stores. They put them in during 1956 or 1957 in both stores. In his contacts with the witness Mr. Crocker has never told him that the purchase of American Girl shoes was not in keeping with the Brown franchise program. He has never attempted to hinder or prevent the witness from carrying American Girl shoes. He has never threatened to take the witness off of the Brown franchise program for carrying the American Girl shoes. As a Brown franchise dealer the witness has no hesitancy in purchasing and continuing to carry American Girl shoes, unless the [fol. 683] patterns would be such that they didn't feel it would be profitable to carry them.

The brand that they carry is generally determined by the success of whether the shoes sell at retail in their operation. That definitely applies to Brown brands as well as to other brands. If the Brown brand did not perform successfully the witness would certainly feel free to give up that brand and go to another. As to whether the American Girl line conflicts with any Brown brand line, he believes there is a line of the Brown Shoe Company called Smart Aire, which would retail in the same price field as their lower-priced American Girl shoes. He would consider this a conflicting line.

They carried Deb shoes for two seasons, just after the Second World War, 1946 and 1947, and possibly 1948. They did not have the Philipsburg store. It was the Clearfield store. During those years they had stores in Clearfield and DuBois. They carried the Debs in the DuBois also.

Q. Why did you stop carrying Deb shoes?

A. Well, in shoe terminology, the majority of their shoes were what we term makeup shoes, in which you place your original order and there is no replacement for sizes out of stock, and their patterns were so diversified that a store like our operation could not possibly cover the entire line in a representative way without accumulating too many pairs during the season.

Q. How did the Deb shoes fit?

A. They were—I would term them ill-fitting, bad fitting.

Q. Did you take that into account in determining whether to carry them or not?

A. I did.

His decision to drop Deb shoes had nothing to do with being in the Brown franchise program. No one from Brown or the Brown franchise program told him or asked him to drop Deb shoes. They did not threaten to remove him from the Brown franchise program if he didn't drop Deb shoes.

He would guess they have a written franchise contract. He believes they do. But it would be way back in their past records, back to the original year in which they opened, 1935. He hasn't referred to the franchise contract for a good [fol. 684] many years. No one he can recall from the Brown franchise division ever referred to it in contacting him or dealing with him in the past ten years, anyway. The fran-

chise contract does not mean anything to him as a written contract.

He would feel free to leave the Brown franchise program at any time with proper mutual agreement. He means by that that their dealings with the Brown Shoe Company have always been on a friendly basis, and that would mean if he would terminate it it would be in a normal business-like manner. He does not feel that he has a business obligation to stay on the program, not at all.

Cross-examination.

Their Philipsburg store is on the Brown franchise program. They went on it in September of 1956. In Philipsburg there is a large hospital maintained by the State of Pennsylvania. He would guess about a 125-bed hospital. It is a nursing school in connection with the hospital. The Air Step line in their Philipsburg store does not include a nurses' line of Air Step. They do not carry any other line of nurses' shoes in what you would term strictly nurses, besides Clinic and Lazy Bones. They carry other white shoes that could be used as such, from a house that makes casual shoes, Viner Brothers. They do not carry any Brown lines which might be used as nurses' shoes.

Their corporation owns both the Clearfield and the Philipsburg stores. It is one corporation. Their approximate sales last year, combining the two stores, would range between \$175,000 and \$210,000, somewhere in there. The DuBois store was also in the corporation. They closed it in 1956. It was on the Brown franchise program. The witness would estimate that between 60 and 65 percent of their total volume of shoe sales, for both stores combined, is made up of Brown line shoes. The witness carried the Lazy Bones line in the Philipsburg store. That was just for six months. Just for that one semester or year in connection with the hospital regulations.

In connection with the Brown franchise a fieldman visits the witness periodically from Brown. On his visits he does [fol. 685] not suggest what line of shoes they should have in their store. As to whether he asks whether or not the witness should get rid of a conflicting line, the witness said, not unless it isn't showing a good profitable performance.

The witness does not disclose to him what line of shoes they are going to buy in the future.

The testimony of the witness was that he put in American Girl shoes in either 1956 or 1957. He disclosed in 1958 to the Brown fieldman that visited his stores that he was going to buy American Girl in the fall of 1958. That was not in response to a question by the fieldman, it was in connection with working on their open-to-buy budget. The fieldman did not suggest that they buy a Brown line in lieu of the American Girl line. He did not at any time subsequent to that recommend to the witness that they should buy a Brown line in lieu of the American Girl line. He recommended that they look at the Smartaire line as being a line comparable to American Girl. The American Girl line is aimed at very young female buyers and is also a budget retail priced shoe. Their leading line of shoes for that type of customer is American Girl. Less than 5 percent of their inventory is made up of sales to this type of customer. The witness did not have the Smartaire salesman visit him at his stores. He visited with the salesman at the shoe shows.

Q. Did you realize that in having the American Girl line in your store that you were not in keeping with the franchise program?

Mr. Taylor: I object to that, your Honor. There has been no testimony of that nature in the proceeding.

Mr. Timony: I am asking if he knows.

Mr. Taylor: You asked him, "Did you realize." You stated that as a fact and it is not a fact.

Hearing Examiner Creel: Overruled.

By Mr. Timony:

Q. Would you like to hear the question again?

A. I would.

[fol. 686] (The reporter read the question.)

A. No.

The witness bought Deb shoes in 1947 and 1948 and possibly 1949. He would say a fair estimate and possibly their open order, whether it was in 1946 or 1947, in their total store operation at that time would have been approximately

360-some pairs. That is for two stores for the opening year. And gradually the other two years it would be less than that, because the shoes were not successful.

Redirect examination.

There are areas in which the Viner line of shoes they carry conflict with Brown brand shoes. In the sports and casual field it would conflict with Robin Hood, Robinette—that is young girls—and possibly Glamor Deb. The witness never carried the Lazy Bones line, the full line, in Philipsburg. They just had this one shoe that he spoke of. One pattern. American Girl shoes were approximately less than 5 percent of their total inventory. That includes canvas and rubber. About 10 percent of their inventory is in canvas and rubber footwear. These figures are roughly the same with pairs or dollars and cents. The Juvenile salesman never calls on the witness to sell him Lazy Bones shoes. The witness has never purchased Smartaire shoes at the Brown Shoe Company.

Recross-examination.

The witness couldn't tell what pairage of Viner shoes they bought last year. He has the dollars and cents purchases. In 1960 at wholesale in Philipsburg, \$2,259, and in Clearfield, \$3,107.

Further redirect examination.

The average cost of the wholesale Viner shoes would be \$4.25.

[fol. 687]

October 31, 1961

COLLOQUY

Counsel for respondent asked to have marked for identification Respondent's Exhibit No. 6, A through V. This document is entitled Stipulation of Facts. This represents a stipulation between counsel to the effect that if a Mr. Roy St. Jean, the manager of the market and sales analysis department of respondent were called as a witness he would

testify as to the subject matter contained in this particular document. There being no objection, Respondent's Exhibit No. 6, A-V was received in evidence.

Respondent's Exhibit 7, A through G was then marked for identification. Counsel for respondent said that the exhibit recites that counsel for both parties stipulate and agree that if the managers of the selling divisions of respondent were called as witnesses in this proceeding they would testify as to the subject matter therein set out. Then Counsel for respondent asked to have marked for identification as Respondent's Exhibit 8, to be considered a physical exhibit in the record, a loose leaf folder which contained a series of advertisements of International Shoe Company relating to a "Merchant's Service Division." Appended to this exhibit is an index. At this time Respondent's Exhibit 7 and Respondent's Exhibit 8 were offered into evidence.

Mr. Timony: I have no objection to Respondent's Exhibit 7 with the exception of part B of that stipulation on page 3.

Mr. Burke: I didn't realize you had an objection to that.

Mr. Timony: The preamble to the stipulation will show that I am stipulating that that is the substance of the testimony of witnesses which Brown would call.

Hearing Examiner Creel: Yes.

Mr. Timony: But I am stipulating also to the genuineness of the documents which Mr. Burke has offered as Respondent's Exhibit 8. I am not stipulating as to the relevance or materiality of Part B of Respondent's Exhibit 7 [fol. 688] on the grounds that I think it is irrelevant as to what any other manufacturers, whether they be competitors or not of Brown, give in the way of benefits and services without any contract which binds the retailer who receives those benefits and services to deal exclusively with that manufacturer or advertise in any way with that manufacturer.

Hearing Examiner Creel: As I understand it, you are stipulating as to the accuracy of the facts stated on the B section of the stipulation which has been marked Respondent's Exhibit 7, but you object to the introduction in evidence on the grounds you mention? Is that correct?

Mr. Timony: Not completely stipulating to the accuracy

either. I am saving them the trouble and necessity of calling a witness and putting him on the stand.

Hearing Examiner Creel: What you are doing is stipulating that, if called, their witness would so testify.

Mr. Timony: That is correct. And I am not objecting to Part A of that Respondent's Exhibit 7 and I will state my ground for the admission of that if you would like me to.

Hearing Examiner Creel: No, that is not necessary if you don't make any objection to it. Mr. Burke, what is your contention with respect to the manner in which the benefits and services offered by other shoe manufacturers are relevant here?

Mr. Burke: Well, I believe that inasmuch as this is a Section 5 proceeding and we are charged with some type of unfair trade practice—

Hearing Examiner Creel: Well, a Section 5 charge is the resale price maintenance. The other charge is under Section 3, isn't it?

Mr. Timony: No, your Honor, both are under Section 5.

Hearing Examiner Creel: Section 5.

[fol. 689] Mr. Burke: This is not strictly a Section 3 proceeding and I believe that what is very relevant and material to any type of trade practice that may be challenged and a complaint issued against a respondent for doing what they are alleged to be doing that it is very relevant and material for the proper consideration of the Commission in a matter such as this to have a full understanding as to what the trade practices are. I do not believe that—I recognize Mr. Timony's position—where he used some words about a contract and an obligation, the record will speak for itself in regard to that. I would object to that characterization but I do think that the benefits and services available from other manufacturers for their customers that carry their lines of shoes is extremely relevant and material to this type of proceeding to put the particular practices of Brown Shoe Company, Respondent, in proper context with the field of competition in the sale of shoes and merchandise of that character. And I believe that all those various matters that are referred to in this sub-paragraph B of Respondent's Exhibit 7 are related to and are comparable with many of the features of what has been called in the record of the Brown Franchise

Program, that not only we do but others do, that is, it is customary and practiced in this industry.

Hearing Examiner Creel: Well, I am inclined to think it is rather remote but I am going to overrule the objection and receive it in evidence. You have offered 7-A through G and 8-A through Z, haven't you?

Mr. Burke: Yes, sir.

Thereupon, Respondent's Exhibits 7 A-G and 8 A-Z were received in evidence.

[fol. 690] HARRY W. ASTROTH, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness lives in Kirkwood, Missouri, part of St. Louis County. He is employed by Brown Shoe Company as credit manager. He is also a director of the company. He has held both positions since 1951. The witness is in charge of the credit work done in connection with the Brown franchise stores. That is done under his supervision and control.

Respondent's Exhibit 9 was marked for identification and shown to the witness. He said, this is our card we use for credit reference to exchange information with other manufacturers. We share with the firm that we are inquiring of, our experiences as to the length of time we have sold the account, our high credit, manner of payments, our terms, and in turn we ask the company that we are inquiring of to give us their experience. This is known as credit exchange or trade references. The type of information obtained is basically the same as we give them. We want to know the amount that the dealer is owing them, how he is paying their bills, the terms that they sell him, their high credit, how long they have been selling them. If they do not do business with that particular dealer they mark on the card "Not selling," or if they have no recent experience, they will mark it as such, "No recent experience." In other words they say on the card whether or not the account has been sold by the manufacturer of whom the inquiry is made. Those cards are used by Brown in the normal and ordinary course of busi-

ness. These are regular "trade clearance cards," which they use for all of their credit reference work. It would be part of the witness' responsibility to supervise sending out such cards to manufacturers.

Respondent's Exhibit 10 was then marked for identification and shown to the witness. This is a summary of the results of the cards which they sent out to 6 shoe firms on dealers who had been dropped from the franchise program over the period from October 31, 1949 to April 1, 1958. [fol. 691] These cards were sent to the firms of Juvenile Shoe Company, Deb Shoe Company, Freeman Shoe Company, Weyenberg Shoe Company, Huth-James Shoe Company and Leverenz Shoe Company, and this is a summary of the returns to Brown's request for information by these various accounts. The tabulation of summary was made under his direction and control. He personally supervised that.

The witness was asked to describe the code on the front on page A of the exhibit. The code letters "DNS" were used by the respondents on the basis that they do not sell or they at least have no account that they can find on their current ledgers. The code "NE" means that they have never sold that type of account. The code "NRE" means no recent experience, which means that the account may have been active on their books at one time but they have not sold it for at least 12 months. When they mark down "1", that means that it is sold for the first time and usually they have no pay experience to give Brown for that time. And for the length of time, they use either months or years. If it means months, it means that they have sold the account for less than one year, and on the basis of years, it means that they have sold that account for two years or more. That is more or less standard practice among the credit men who exchange information.

The witness' attention was called to the fact that Respondent's Exhibit 9 for identification comes in two parts, or at least it is separate. As to the mechanics, the witness said they have a young lady who will secure from Brown's own ledgers the experience they have had with that particular dealer. She will prepare that and type the dealers name and his address on that portion of the card which is sent to the company that they want information from. His

name is not exposed because this is a double post card so that the name of the account is actually stapled underneath. Now when the company that they are inquiring of returns the information they only show the town and then they use a code number, so that through the mails there is no way to identify this customer. When the card comes back, then the girl looks at her code book and then writes the customer's [fol. 692] name so they can file it in their credit files which is their usual practice. Respondent's Exhibit 9 does not have a code number on it. The cards used by the witness in obtaining results from which he summarized in Respondent's Exhibit 10 did have the numbers on them. Respondent's Exhibit 9 was returned with a letter and did not have the customer code on it. The cards that form the basis for his summary did contain the customer's code number.

Respondent's Exhibits 9 and 10 A through E were then offered into evidence.

Voir Dire examination.

By Mr. Timony:

Q. Mr. Astroth, how did you arrive at the names of the stores on the list which were formerly Brown Franchise Stores? Had all of them left the program between October 31, 1949 and April 1, 1958?

A. Yes, sir.

Q. There are no other stores which left the Brown Franchise Program other than the ones on this list?

A. Not to my knowledge.

Mr. Taylor: The exhibit shows that those stores which had been sold or closed out of business were not circularized just for that reason and that is stated on the front page.

The Witness: In other words, we checked all of the names of the customers who have been dropped from the program during that period; with Dun and Bradstreet, which is a recognized credit rating agency and where they were no longer listed we assumed that they were no longer in business or that it has been sold and was under another name. These names here were still listed in the book.

By Mr. Timony:

Q. Couldn't that mean also that the store—I withdraw that. You didn't use Commission's Exhibit 28 in preparing this tabulation, did you?

A. I am not familiar with the exhibit, sir.

Q. But to your knowledge, you did not? Would you like to see it? (showing to witness) Commission's Exhibit 28 is a [fol. 693] list of Brown Franchise stores leaving the program between October 31, 1949 and October 31, 1955.

A. Well the period covered by the other survey was a little different period so I don't know whether this was or not. This is a different period. This covers a shorter period of time.

Q. But you personally didn't use this exhibit?

A. No.

Q. And you did prepare the Respondent's Exhibit which has been marked as what?

Mr. Taylor: Respondent's Exhibits 10-A through E for identification.

By Mr. Timony:

Q. You did prepare that?

A. That was done under my supervision.

Q. Did you use Commission's Exhibit 29 in the preparation of that Respondent's Exhibit? (Showing to witness)

Hearing Examiner Creel: Is there anything to show when these cards were received from these companies?

Mr. Taylor: The cards themselves show it.

The Witness: We have a post mark on them, sir.

Hearing Examiner Creel: Well, they are not being offered, however.

Mr. Taylor: That is right. The period involved was—

Hearing Examiner Creel: What period were they received in.

Mr. Taylor: Well, the period at the end of 1960 to right up to the present.

By Mr. Timony:

Q. Mr. Taylor tells me that the list of franchise stores from which Respondent's Exhibit 10 was prepared was

taken from Commission's Exhibits 28 and 29 and that this list can be put in evidence, is that correct?

[fol. 694] Mr. Taylor: No, simply that a list—what I am saying is that I made up a list of all of the stores that have been dropped from the program using Commission's Exhibits 28 and 29. There is some overlapping of the exhibits, every franchise store that appeared in there was put on the list given to Mr. Griffin and then given to Mr. Astroth and that was the list that was used.

Mr. Timony: Is that the list of all of the stores that you used in preparing Respondent's Exhibit No. 10?

Mr. Taylor: Yes. Any store that does not appear in Respondent's Exhibit 10 and does appear on Commission's Exhibits 28 or 29 has either been sold, closed or out of business according to Mr. Astroth's check with the Dun and Bradstreet records.

Mr. Timony: You are going to put those lists in evidence now?

Mr. Taylor: I am not sure that I have a list and I don't know why that is necessary.

Mr. Timony: I thought you just told me that you put it in.

Mr. Taylor: No. I am not even sure that I have it with me. That is the mechanism by which the tabulation was made. The cards were sent out—let me ask Mr. Astroth one thing: How were the cards sent out with regard to period of time, Mr. Astroth?

The Witness: They were started, we mailed out starting last Fall—I would say late Fall, probably November or December—up until probably two or three weeks ago we covered that period of time.

Hearing Examiner Creel: How many cards were sent out, do you know?

Mr. Taylor: Your Honor, I have the cards right here and we have no objection to putting them in evidence. We would be glad to do so.

Hearing Examiner Creel: I am not urging that they be offered, but I was trying to determine how many replies you received from how many cards sent out.

[fol. 695] Mr. Taylor: The exhibit itself will show that, your Honor, because the only replies not received will be blanks in the exhibit.

Hearing Examiner Creel: Oh, in other words, the—

Mr. Taylor: Each retailer who was circularized by this trade inquiry card, those not appearing on there were shown to have either been sold or gone out of business or closed, and therefore were not circularized, so you can determine from there that virtually everyone, credit information was received from virtually every store.

Hearing Examiner Creel: That answers my question.

Mr. Timony: Are you finished?

Mr. Taylor: Yes, I am.

By Mr. Timony:

Q. Did you personally, or did you supervise the person who did, look up the list of franchisees which Mr. Taylor gave you or Mr. Griffin gave you in Dun and Bradstreet to determine whether or not that store was presently under the same name as it was prior to having left the Brown Franchise Program?

A. That is correct. That is the first thing we did when we got the list.

Q. Did you do it yourself?

A. I did not do it myself. I had the young woman who also handles the mailing of cards to do that job before she started out on the inquiries. She checked and then she showed me the list and for those that were no longer listed in Dun and Bradstreet, we removed from the list before she sent out her inquiries. In other words, she marked it "NR", which in our work means "Not Rated".

Hearing Examiner Creel: In other words, if a company, if a shoe store had changed its status from a proprietorship to a corporation with a slight change in name, you would not have sent it?

The Witness: No, sir.

[fol. 696] By Mr. Timony:

Q. Or if it dropped the name Brownville or some other such definition from the name, you would not have it on Respondent's Exhibit 10?

A. If there was any basic change in name that we would not identify it in the Dun & Bradstreet book, we would not include it.

Q. Did you look in the Dun and Bradstreet report under names other than those given to you on the list by Mr. Griffin?

A. No.

Mr. Timony: That is all.

Direct Examination (resumed).

The witness was generally familiar with the stores whose names appear in Respondent's Exhibit 10-A through E. He has known many of those stores. As to the basis for his familiarity with them, he said, being with the company as long as he has, he more or less grew up with a lot of their dealers, and furthermore he has had the opportunity at times to analyze their figures, check their operation. This is part of his normal job. He is also familiar generally with most of those stores who were not circularized because the stores were closed or went out of business or closed its doors. As to whether he knows of any occasion of a store simply changed from partnership or corporation or made a slight change in its name, and therefore was not circularized with the trade information card, he is sure there would be cases of that kind but he wouldn't know specifics. He really doesn't think there were many.

At this time Respondent's Exhibits 9 and 10A-E were received in evidence without objection.

Hearing Examiner Creel: The reason I ask that question about the change in the status of the stores, it seems to me that a number of the witnesses had testified that they had changed the status and perhaps their name, a slight change.

The Witness: If it was a change in ownership, either from a partnership or sole proprietorship to a corporation, as far [fol. 697] as credit information is concerned, you have to start fresh because you are dealing with a new entity there. You are not dealing with the same thing.

The witness is familiar with credit managers and credit men and other shoe manufacturers around the country. They are a very congenial and close knit group. They have monthly and annual meetings. It has developed in the last 10 years where the credit men are coming to get to know each other much better than they used to. He is a member of the National Association of Credit Management, through

the St. Louis branch. The witness has formed an opinion as to the help, from the credit or financial standpoint, that is available to the average retail shoe dealer shoe customer from shoe manufacturers around the country. He said, I think one of the great developments in the field of credit management in the last 10 years has been the ability of many credit men now to discuss retail problems, not only from a standpoint of finances, but from the standpoint of merchandising practices which basically is still finances. It is merely the management of money when you get right down to it. Merchandising is merely management of money to come up with a good profit and I would say by and large that credit men today are very familiar with retail operation, what has to be done to show a profit. That is even true of banking people in the banks today. They are far more familiar with retailing and merchandising than they were years ago. As to whether they offer this type of counseling service to retailers the witness said if they are doing their job well they should. To the best of the witness' knowledge in talking to these men in various meetings, other shoe manufacturers, they counsel with their accounts just as Brown does. As to the type of information shoe manufacturers need in order to give the types of advice that he is speaking of, basically the customer-dealer should submit a balance sheet and a profit and loss statement so that you have complete figures that you can make an analysis of his operation. And that too has been a very wonderful development over the years. The dealers today are more willing to supply their creditors with information in detail, such as profit and loss [fol. 698] statements. In fact that has only been within the last 5 or 10 years that dealers now willingly submit their profit and loss figure. They used to merely give you a balance sheet.

It is the witness' testimony that, given that kind of figures, the credit men and shoe manufacturers around the country with whom he is familiar give advice as to the inventories and turn over and mark up. He knows of many credit men with other shoe firms that give that type of help, that type of service. That type of service is not restricted to being available only in large firms such as Brown, International or General. He is familiar with credit men of smaller firms who are qualified and do this type of work. Travel and go out and

visit accounts, and analyze their figures with them and help them. These credit men, many of them, are qualified to set up merchandising programs.

As to the type of help that is available in that regard through banks, the witness can only answer that from the standpoint of the type of information Brown now gets from a bank when they write them as to a particular dealer they are investigating. It is only in recent years that the banks will write you in great detail and give you their opinion of the progress of that particular account. And in the past they would write very brief letters and merely the fact that you were using a customer of this bank who maintained a checking account with an average balance of so and so. But now they actually go in and give you detailed information which of course is all treated in confidence. As to whether he thinks they are in a position upon receipt of proper information from a shoe dealer, to counsel him with regard to inventory turn over, mark up, and expense, the witness said by and large your bankers today are qualified to do that job and they are doing it and doing it well.

When a store goes off the Brown franchise program there is no change whatsoever made in the credit terms or discounts made available to that store. There is no difference between the credit terms and discounts of prices charged [fol. 699] franchise stores or general accounts of Brown. The witness said, our prices and our terms are the same to everyone regardless of their size.

Cross-examination.

The credit arrangements and terms that Brown gives to Brown franchises and to other purchasers from Brown are the same regardless of the size. He thinks that is basically true throughout the industry. He wouldn't be familiar with the practices of other firms but he thinks as a whole they treat all accounts on the same basis regardless of their size. The witness does talk to other credit managers and he has a friendly relationship with a great number of them, so he would be familiar with that information. He is knowledgeable in the retail sales, for instance, of the Brown franchisee. That would be a part of their profit and loss state-

ment which he sees. The witness doesn't know the average volume of sales of Brown franchisees for 1960, because it is not his area of responsibility to determine these sales figures. If he gave a figure it would be by hearsay only, not one that he actually has prepared. He believes that in a conversation with Mr. Johnston some time ago he mentioned that the average retail sales of these stores were somewhere in the neighborhood of \$90,000 but the witness is not positive of that.

The witness scans the balance sheets for the purposes of determining the credit responsibility of these franchisees, as well as other accounts that are not on the program.

That conversation with Mr. Johnston was last week in Chicago. They were discussing the growth of this program and the performance of the dealers, and he believes that at that time Mr. Johnston mentioned that there was an average volume of about \$90,000.

Redirect examination.

In his conversation with credit men connected with other shoe manufacturers, they have never told the witness they were offering varying credit terms to their larger accounts, [fol. 700] or have discussed the matter at all, as to specific accounts. The association will at times make a survey of, not only the shoe industry but all industry, as to their terms and credit practices and that is then published to all of the members. In other words, what is the usual terms in the shoe industry and so forth. But as to specific companies they do not get that information. Such a survey would probably not show variances to individual customers if they were given.

In counseling with Brown franchise stores, or any shoe retailers, with regard to the adequacy of their turn over and mark up and whether their costs are too high or too low, the balance sheet and the profit and loss statement are adequate records if you are dealing in merely dollars and cents. Now if you want to go into merchandising by pairs, then you have to get pairage information. The witness would say that the bulk of accounts who are now operating such a franchise store, you would really get the information in dollars and